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Supreme Court of the United States

OCTOBER TERM, 1964

No. 31

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, PETITIONER,

vs.

UNITED AIR LINES, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 31, 1964
CERTIORARI GRANTED APRIL 20, 1964

SUPREME COURT OF THE UNITED STATES

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[fol. A] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 15,176

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, Plaintiff-Appellant,

vs.

UNITED AIR LINES, INC., Defendant-Appellee.

Appeal from Judgment and Order of United States District Court for the Southern District of Ohio, Western Division at Cincinnati.

Appendix for Plaintiff-Appellant—Filed November 19, 1962

[fol. 1]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

Civil Action No. 4904

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, Plaintiff,

vs.

UNITED AIR LINES, INC., Defendant.

RELEVANT DOCKET ENTRIES

11- 9-61	Complaint filed.
12-26-61	Motion of Defendant to Dismiss or for Summary Judgment, together with Notice of same. and Memorandum.

12-26-61 Affidavit of Charles M. Mason, filed.

12-26-61 Affidavit of Pate Hutchens, Jr.

12-26-61 Affidavit of S. Szalma

2-23-62 Plaintiff Motion for Summary Judgment and Notice, filed.

3-12-62 Supplemental Affidavit of Charles M. Mason—filed.

8- 9-62 Memorandum Opinion—of the Court, holding that Defendant's Motion to dismiss for lack of jurisdiction is found to be well taken—filed.

8-29-62 Order of Court dismissing the Complaint, Further denying respective parties Motions for Summary Judgment and that plaintiff pay the costs of action.

8-30-62 Certified copy of Order mailed to Counsel for Pltf and Deft

9-10-62 Notice of Appeal filed by plaintiff.

[fol. 2]

9-10-62 Certified copy of Notice of Appeal mailed to Mr. Jack G. Evans, atty. for deft.

9-10-62 Bond on Appeal filed.

9-10-62 Certified copy of Notice of Appeal sent to U. S. Court of Appeals.

IN THE UNITED STATES DISTRICT COURT

COMPLAINT—Filed November 9, 1961

Now comes the plaintiff, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, and for its cause of action states:

1. This is an action for Declaratory Judgment as authorized by Sections 2201 and 2202 of Title 28 of the United States Code. (28 U.S.C.A. Sections 2201 and 2202). It is brought because there now exists, as will hereinafter be more fully described, an actual controversy between the parties with respect to maintenance of a collective bargaining agreement executed pursuant to the provisions of the Railway Labor Act (45 U.S.C.A. Sections 151 et seq.).

2. The jurisdiction of this Court derives from the Act of June 25, 1948 (28 U.S.C.A. Sections 1331 and 1337), and from said Act as amended by the Acts of July 26, 1956, and July 25, 1958 (28 U.S.C.A. Section 1332). The matter in controversy exceeds the sum or value of Ten Thousand Dollars ($10,000.00), exclusive of interest and costs, and involves the Railway Labor Act (45 U.S.C.A. Sections 151 et seq.). As hereinafter more fully described, full diversity of citizenship exists between plaintiff and defendant.

[fol. 3] 3. The plaintiff, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter called "the Brotherhood"), is an unincorporated standard national and international railway labor organization representing under the Railway Labor Act (45 U.S.C.A. 151 et seq.) various employees of numerous railroads and air carriers operating within the United States. Its principal office and headquarters is located at 1015 Vine Street, Cincinnati 2, Ohio.

4. The defendant, United Air Lines, Inc. (hereinafter called "United"), is a corporation organized and existing under the laws of the State of Delaware. United engages in the air transportation of mail, persons, and property over various routes within the United States pursuant to the authority contained in certificates of public convenience

and necessity issued to United by the Civil Aeronautics Board, a Federal agency, under the provisions of the Federal Aviation Act of 1958 (49 U.S.C.A. Sections 1301 et seq.) and its predecessor statute, the Civil Aeronautics Act of 1938 (49 U.S.C.A. Sections 401 et seq.). United provides air service to various cities within the State of Ohio pursuant to the authorizations contained in such certificates including Akron, Columbus, Dayton, Cleveland, Toledo, and Youngstown.

5. United is a common carrier by air engaged in interstate commerce within the meaning of the provisions of Sections 201 and 202 of the Railway Labor Act (45 U.S.C.A. 181 and 182) and as such is subject to provisions of that statute as set forth therein.

6. Venue in this action lies with this Court pursuant to the provisions of Title 28, Section 1391 of the United States [fol. 4] Code (28 U.S.C.A. Section 1391) by reason of the fact that United is licensed to do business in this judicial district and in fact is doing business within such judicial district.

7. On May 13, 1947, in a proceeding identified as Case R-1735, the National Mediation Board, a federal agency, acting pursuant to the provisions of the Railway Labor Act, particularly Section 2, Ninth, thereof, certified the Brotherhood as the designated representative for the purposes of that Act of all employees of Capital Airlines, Inc. a Delaware corporation (hereinafter called "Capital"), a common carrier by air engaged in interstate commerce, in the craft or class of clerical, office, stores, fleet, and passenger service. Pursuant to this certification the Brotherhood and Capital executed a collective bargaining agreement, effective August 1, 1948, covering rates of pay, rules and working conditions of such craft or class of employees. Such agreement was revised from time to time in accordance with the provisions of the Railway Labor Act.

8. On October 21, 1958, the Brotherhood served on Capital a notice, as required by Section 6 of the Railway Labor Act (45 U.S.C.A. Section 156) proposing various changes in the existing collective agreement between the Brother-

hood and Capital. Negotiations between the Brotherhood and Capital on the subjects contained in the notice of October 21, 1958, failed to result in an agreement. Therefore, on June 8, 1959, the Brotherhood filed an application with the National Mediation Board invoking that agency's mediation services in the dispute under Section 5 of the Railway Labor Act (45 U.S.C.A. 155). This application was accepted [fol. 5] by the National Mediation Board which took jurisdiction of the dispute and assigned the proceeding Case No. A-6037.

9. Mediation sessions were thereafter held in the dispute under the auspices of a Mediator assigned by the National Mediation Board during various dates in June and July, 1959. Such mediation was successful in bringing about a settlement of the dispute through the execution of an agreement between the Brotherhood and Capital on August 3, 1959, revising the existing collective bargaining agreement between the parties. A copy of this agreement is attached hereto as Exhibit A. Article 1, paragraph (b) of such agreement of August 3, 1959, reads as follows:

> "All provisions of this Agreement shall be binding upon the successors or assigns of the Company and in case of a consolidation or merger, the Company will notify the Brotherhood at least ninety (90) days prior to such consolidation or merger, and representatives of the Company and the Brotherhood will meet and negotiate for the procedure to be followed and the protection to be afforded the employees involved."

This agreement has at all times since August 3, 1959, been in full force and effect.

10. On August 11, 1960, Capital and United entered into an agreement of merger, providing for the merger of Capital into United as the surviving corporation. Section III, paragraph 1, of this merger agreement reads as follows:

> "On the effective date of the merger:
>
> "1. UNITED shall possess all the rights, privileges, powers and franchises as well of a public as of a pri- [fol. 6] vate nature, and shall be subject to all of the

restrictions, disabilities and duties of each of the Constituent Corporations; and all and singular, the rights, privileges, powers and franchises of the Constituent Corporations, and all property, real, personal and mixed, and all debts due to each of the Constituent Corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of the Constituent Corporations shall be vested in UNITED: and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of UNITED as they were of the Constituent Corporations, and the title to any real estate vested by Corporations, and the title to any real estate vested by deed or otherwise in each of the Constituent Corporations shall not revert or be in any way impaired; but all rights of creditors and all liens upon any property of each of the Constituent Corporations shall be preserved unimpaired, and all debts, liabilities and duties of each of the Constituent Corporations shall thenceforth attach to UNITED, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it."

11. Said provision of the merger agreement is in accordance with the requirements of the law of the State of Delaware (Sec. 328 Delaware General Corporation Law) which provides that liabilities of corporations existing under the laws of that state shall not in any way be lessened by the consolidation or merger of two or more corporations.

12. Neither Capital nor United gave any notice of the proposed merger to the Brotherhood in direct violation of the provisions of said Article 1, paragraph (b) of the collective bargaining agreement between the Brotherhood and Capital. The Brotherhood learned of the Capital-United merger agreement only through the newspapers on or about August 12, 1960.

[fol. 7] 13. On August 16, 1960, the Brotherhood General Chairman on Capital wrote both Capital and United, calling

attention to Article 1, paragraph (b) of the collective bargaining agreement of August 3, 1959, and requested a conference thereunder. United declined such conference. On November 28, 1960, Brotherhood representatives met with officials of Capital. The Capital representatives stated they could not negotiate an agreement relating to employees which would be effective upon consummation of the merger or binding on United.

14. On August 11, 1960, Capital and United filed a joint application with the Civil Aeronautics Board for approval of the merger agreement under Section 408 of the Federal Aviation Act of 1958 (49 U.S.C.A. Section 1378) and such other sections of that statute as might be applicable. The Brotherhood appeared in the hearings before the Civil Aeronautics Board and requested that, if such Board should approve the proposed Capital-United merger, the Board impose as a condition of its approval a requirement that United take over and apply the Brotherhood-Capital collective bargaining agreement of August 3, 1959, to those employees of Capital covered by the agreement. On April 3, 1961, the Board issued its Order No. E-16605, approving the proposed merger. The Board did not accede to the Brotherhood's contention that the Capital acquisition should be "conditioned" upon the assumption by United of the collective bargaining agreement. Neither did it purport to pass on the issue of whether United would be justified, as a matter of contract or labor law, in ignoring the agreement.

15. On May 9, 1961, representatives of the Brotherhood [fol. 8] met with officials of United concerning the application of the Brotherhood-Capital agreement of August 3, 1959, to employees of Capital covered by the agreement upon the consummation of the merger. United took the position that it had no responsibility with respect to said agreement and would not recognize any rights of any Capital employees thereunder after consummation of the merger.

16. The Brotherhood, on May 29, 1961, prior to the consummation of the merger, filed an application with the National Mediation Board pursuant to Section 5, Second of the Railway Labor Act (45 U.S.C.A. Section 155 Second)

for an interpretation of the application or meaning of the collective bargaining agreement of August 3, 1959, between the Brotherhood and Capital. On July 11, 1961, the National Mediation Board conducted a hearing on the Brotherhood application. United appeared at this hearing and opposed the application. On August 28, 1961, the National Mediation Board issued an opinion, a copy of which is attached hereto to Exhibit B. With respect to the language of Article 1, paragraph (b) of the agreement of August 3, 1959, the National Mediation Board found as follows:

> "After reviewing the record of mediation in NMB Case No. A-6037, as well as the transcript of hearing and briefs submitted by the Brotherhood and United Air Lines, Inc., this Board is of the opinion that the language of Article 1(b) of the agreement of August 3, 1959, reading 'all provisions of this agreement shall be binding upon the successors and assigns of the company' is clear and unambiguous. In other words, the language means just what it says and we so find."

17. Thereafter, the Brotherhood by letter dated Septem-
[fol. 9] ber 1, 1961, requested a meeting with United to discuss the situation in the light of the interpretation of the agreement of August 3, 1959, set forth in the decision of the National Mediation Board. By letter dated September 21, 1961, United refused such a meeting.

18. The merger was consummated on or about June 1, 1961, and since that date the approximately 2,700 or more employees of Capital in the craft or class covered by the agreement of August 3, 1959, between the Brotherhood and Capital have been employees of United. That carrier has refused to apply the terms of such agreement to any of these employees or to recognize any rights of any of these employees thereunder. Among those rights are matters relating to seniority, basis of pay, protection against arbitrary discipline and discharge, procedures for the adjustment of grievances and against arbitrary transfer, provisions for the health and safety of employees, and various benefits such as sick leave allowances, overtime allowances, group insurance and pension benefits, maintenance of union membership and check off of union dues.

19. United's refusal to apply the provisions of the agreement of August 3, 1959, between the Brotherhood and Capital to any of the employees of Capital in the craft or class covered by such agreement and who became employees of United upon consummation of the merger constitutes a violation of the provisions of Article 1 paragraph (b) of said agreement, which makes the provisions thereof binding upon the successors or assignees of Capital.

20. United's refusal to apply the provisions of the agreement of August 3, 1959, between the Brotherhood and Capi- [fol. 10] tal to any of the employees of Capital in the craft or class covered by such agreement and who became employees of United upon consummation of the merger constitutes a violation of the provisions of Section III paragraph 1 of the merger agreement of August 11, 1960, between Capital and United which provides, among other things, that all liabilities and duties of Capital shall attach to United and may be enforced against it to the same extent as if said liabilities and duties had been incurred or contracted by United.

21. United's refusal to apply the provisions of the agreement of August 3, 1959, between the Brotherhood and Capital to any of the employees of Capital in the craft or class covered by such agreement and who became employees of United upon consummation of the merger constitutes a violation of Section 328 Delaware General Corporation Law, which provides that the liabilities of corporations existing under the laws of that state shall not in any way be lessened by the consolidation or merger of two or more corporations.

22. United's refusal to apply the provisions of the agreement of August 3, 1959, between the Brotherhood and Capital to any of the employees of Capital in the craft or class covered by such agreement and who became employees of United upon consummation of the merger constitutes a violation of the provisions of Section 2, First, of the Railway Labor Act (45 U.S.C.A. Section 152 First) which makes it the duty of all carriers, their officers and agents, to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes arising out of the application of such

agreements in order to avoid any interruption to commerce [fol. 11] or to the operation of any carrier.

23. United's refusal to apply the provisions of the agreement of August 3, 1959, between the Brotherhood and Capital to any of the employees of Capital in the craft or class covered by such agreement and who became employees of United upon consummation of the merger constitutes a violation of the provisions of Section 2, Seventh, of the Railway Labor Act (45 U.S.C.A. 152, Seventh) which prohibits any carrier, its officers or agents from changing the rates of pay, rules or working conditions of its employees as a class as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of the Act.

24. United's refusal to apply the provisions of the agreement of August 3, 1959, between the Brotherhood and Capital to any of the employees of Capital in the craft or class covered by such agreement and who became employees of United upon consummation of the merger constitutes a violation of the provisions of Section 6 of the Railway Labor Act (45 U.S.C.A. 156) by changing the rates of pay, rules or working conditions of its employees embodied in the agreement of August 3, 1959, between the Brotherhood and Capital without complying with the procedures set forth in such Act.

25. By refusing to accept and process grievances of former Capital employees submitted to it in accordance with the provisions of the agreement of August 3, 1959, between the Brotherhood and Capital, United has violated the provisions of Section 204 of the Railway Labor Act (45 U.S.C.A. 184) which requires that all disputes between an employee and a carrier growing out of grievances or out of the inter- [fol. 12] pretation or application of agreements concerning rates of pay, rules or working conditions shall be negotiated between the parties, but failing to reach an adjustment in this manner, the disputes are to be settled by a board of adjustment.

26. The plaintiff Brotherhood has exhausted all of the administrative remedies available to it.

Wherefore, the Brotherhood prays that this Court grant to it the following relief:

(1) That the Court declare the legal rights of the parties with respect to the actual controversy hereinabove described, and their legal relations with respect to the agreement of August 3, 1959;

(2) That the Court declare that United is a successor or assign of Capital within the meaning of the provisions of Article 1, paragraph (b) of the collective bargaining agreement of August 3, 1959, between the Brotherhood and Capital making the provisions of said agreement binding upon the successors or assigns of Capital;

(3) That the Court declare that United assumed the liabilities and duties of the collective bargaining agreement of August 3, 1959, between the Brotherhood and Capital by reason of the provisions of Section III, paragraph 1 of the merger agreement of August 11, 1960, between Capital and United;

(4) That the Court declare that by operation of the laws of the State of Delaware, United is bound by the provisions of the collective bargaining agreement of August 3, 1959, between the Brotherhood and Capital;

(5) That the Court issue an injunction enjoining United [fol. 13] from continuing its refusal to apply the provisions of the collective bargaining agreement of August 3, 1959, between the Brotherhood and Capital to employees of Capital covered by that agreement who became employees of United upon the consummation of the merger;

(6) That the Court assess the costs of this action against the defendant and grant to the plaintiff all other legal or equitable relief to which it may be entitled.

James L. Highsaw, Jr., by R.G.H., 620 Tower Building, Washington 5, D. C.;

Leonard D. Slutz, Roy G. Holmes, 900 Tri-State Building, Cincinnati 2, Ohio, Attorneys for Plaintiff.

[fol. 14]

EXHIBIT A TO THE COMPLAINT

(See opposite) ☞

[fol. 14]

EXHIBIT A TO THE COMPLAINT

1959-62

AGREEMENT

between the

CAPITAL AIRLINES, INC.

and

all that class of

CLERICAL, OFFICE, STORES, FLEET AND PASSENGER SERVICE EMPLOYEES

thereon represented by the

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

Effective August 3, 1959

[fol. 15]

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AGREEMENT

between the

CAPITAL AIRLINES, INC.

and

all that class of

CLERICAL, OFFICE, STORES, FLEET AND PASSENGER SERVICE EMPLOYEES

Preamble

THIS AGREEMENT is made and entered into under the terms of the Railway Labor Act, as amended, by and between Capital Airlines, Inc., (hereinafter referred to as the "Company") and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, A.F.L - C.I.O., (hereinafter referred to as the "Brotherhood").

Article 1

Scope — Employees Affected

(a) The Brotherhood having been designated and selected by a majority of the employees of the class and craft in an election conducted by the National Mediation Board on May 7, 1947 and having been certified by the National Mediation Board on May 13, 1947, Case R-1735, the Company hereby recognizes the Brotherhood as sole and ex-

clusive bargaining agent for all employees in the class c craft of clerical, office, stores, fleet, passenger service an related employees of the Company working within the co tinental limits of the United States and its possessions.

(b) All provisions of this Agreement shall be bindi upon the successors or assigns of the Company and in ca [fol. 24] of a consolidation or merger, the Company wi notify the Brotherhood at least ninety (90) days prior such consolidation, or merger, and representatives of t Company and the Brotherhood will meet and negotiate f the procedure to be followed and the protection to be a forded the employees involved.

(c) These Articles shall govern the hours of service a working conditions of all the following classifications clerical, office, stores, fleet and passenger service employe of Capital Airlines, Inc., as represented by the Brotherho of Railway and Steamship Clerks, Freight Handlers, E press and Station Employees, subject to the exceptions co tained in Negotiated List No. 1 covering positions desi nated as X-1, X-2 and X-3 and exempt.

Skycap
Janitor
Skycap-Janitor
Lead Skycap
Chief Skycap
Mail Clerk
Cargo Agent
Cabin Service Agent
Senior Cargo Agent
Senior Cabin Service Agent
Reservation Agent
C.T.O. Agent
A.T.O. Agent
Space Control Agent
Senior Reservation Agent
Senior C.T.O. Agent
Senior A.T.O. Agent

Senior Ramp/Ticket Lift Agent
Long Line Control Agent
Operation Agent
Freight Agent
Senior Operation Agent
Senior Freight Agent
Supervising Agent
Chief Key Punch Operator
Junior Statistician
Senior IBM Operators
Supervisor Physical Inventories
Analyst
Aircraft Scheduling Specialists
Agency Sales Auditor
Interline Receivables Auditor
Interline Payables Auditor
CAP Ticket Sales Auditor
Cargo Auditor
Airmail Auditor
Refund Auditor
Statistical Auditor
Research Analyst
Routing Office Manager
Asst. Routing Office Manager
Property Accountant
Asst. District Operations Managers
District Operations Managers
Reservation Sales Managers
Ticket Office Managers
Assistant Manager-Space Control
Storekeepers

[fol. 25]

Traveling Auditors

Internal Auditors
Budget Analysts
Cost Analysts
Interviewers
Senior Accountants
Asst. Manager-Budgeting Group
Asst. Manager-Standards Group
Director of Payrolls Division
Asst. Reservations Managers
Routing Agents
Ramp/Ticket Lift Agent
Apprentice Clerk
Jr. Stenographers
Jr. Clerks
Clerk-Typists
Telephone Operators
Chief Telephone Operators
Stenographers
Intermediate Clerks
Key Punch Operators
Senior Clerks
Semi-Senior Accountants
Stock Clerks
Lead Stock Clerks
Pre Draw and Delivery Clerks
Jr. Buyers
Asst. Manager of Inventory Control
Supervisor Space Control
Chief Clerk Records
Chief Clerk Statistics
Asst. Chief Clerk Statistics
Link Trainer Instructor
Aircraft Records Specialists
Draftsmen

Cashier
Assistant Cashier
Crew Routing Specialist
Assistant Storekeeper
Supervising Stock Clerks
Receptionist
Supervisor-Air Travel Administration
Tabulating Group Supervisor
Key Punch Supervisor
Chauffeur
Supervisor of Insurance
Economist
Supervisor of Manuals
Supervisor-Ground Operations Training
Manager-Passenger Revenue Branch
Manager-Refund and Cargo Branch
Secretaries
Electronic Programmers
Manual Technician
Operations Training Instructor
Asst. Mgr. Machine Accounting Branch
Manager of Inventory Control
Senior Buyers
Univac Programmer
Univac Agent
Univac Supervisors
Mgr. Univac Center
Asst. Mgr. Univac Center
Electronic & Methods Research Analyst
Passenger Coordinators
Routing Clerks
Chief Clerk, Duplicating

Chief Clerk, Mail Room
Manager-Central Statistics Branch
[fol. 26]
Supervisor-Field and Internal Auditing
Supervisor-Accounts Receivable, Cash Disbursements and Air Travel
Special Projects Accountant
Mgr. Fiscal & Contract Division
Asst. to Director-Revenue Accounting
Purchasing Manager
Accountant & Tax Assistant
Chief Clerk Revenue Audit
Passenger Service Representative
District Managers—Operations
Manager Personnel Records
Mgr. Budgeting and Cost Branch
Manager Univac System
Manager-Machine Accounting Branch
Staff Manager Training
Manager of Employment
Passenger Service Manager
Sales Representative
Supervisor Central Files
Asst. to Supervisor of Flight Schedules
Customer Services Manager
Asst. Ticket Auditors-Station Sales
Asst. Director Payrolls

Manager Salary Payroll
Mgr. Hourly and Flight
Payroll
Forms Control Officer
Chief Accountant

and other similar positions and employees performing similar work.

• • • • • • •

[fol. 27]

Article 30

Discipline and Discharge

(a) An employee who has been in the employ of the Company for more than ninety (90) paid work days shall not be disciplined or dismissed without written notification of such action, and said notice shall contain the precise charge. The Company must bring the charge within seven (7) days after knowledge of the offense. A hearing thereon shall be had provided that such employee makes written request for such hearing within seven (7) days after receipt of notification to their immediate supervisor.

(b) At such hearing, employee may be represented only by one or more Duly Accredited Representatives.

(c) An employee may be held out of service by the Company pending such hearing.

(d) Such hearing shall be held within seven (7) days of the receipt of the employees written request and a written decision shall be rendered within seven (7) days after completion of hearing. The time limits provided in this Article may be extended by mutual agreement.

(e) The right of appeal by employees or their Duly Accredited Representatives in the regular order of succession up to and including the highest Official designated by the Management to whom appeals may be made is hereby established. When an appeal is taken, further hearing shall be granted if requested of the Official to whom appeal is made. Appeals will be registered within forty-five (45) days after decision is appealed. Hearings and decisions on appeals will be given within a reasonable time.

1. *Supervisors and Officials designated in succession of appeal steps:*

Operations — District Operations Manager or District Manager, Ground Operations Manager or Assistant.
Reservations — Reservations Sales Manager, District Sales Manager, or District Manager, Vice President & Sales Manager.

Ticket Counters — Airport Ticket Office Manager, District Sales Manager, or District Manager, Vice President & Sales Manager.

[fol. 28] *Stores (System)* — District Operations Manager, Director of Procurement and Supply.

Stores (Washington) — Supply Manager, Director of Procurement and Supply.

Treasury — Section Supervisor, Division Head (Controller-Revenue-Audit-Procurement and Supply).

General Office — Section Supervisor, Division Head.

Routing Offices — Routing Office Manager, Manager Flight Scheduling, Director of Flying.

2. Further appeal if taken, may be made first to the Personnel Department, then to the highest officer of the department affected.

(f) Hearings shall be held whenever possible at such time so as not to cause employees to lose rest or time. Employees shall have reasonable opportunity to secure the presence of Duly Accredited Representatives and/or necessary witnesses. The Duly Accredited Representatives shall have the right to question all witnesses.

(g) At hearings if an official record is desired by both parties, the cost shall be borne equally. If official record is requested by either party, cost shall be borne by party requesting same. In the event either party requests copies of such record, cost shall be shared equally.

(h) All written statements made a matter of record at hearings will be signed by person or persons submitting statements and copies furnished to the other party in the dispute.

(i) The Personnel record of the employee will reflect the final decision of the hearing.

(j) Any dispute not settled under the provisions of this article may be referred to the Board of Adjustment as provided for in Article 43 of this Agreement by the Company or properly authorized Duly Accredited Representative within ninety (90) days.

(k) The Brotherhood shall be notified of all hearings and shall be privileged to participate in such hearings.

[fol. 29]

Article 31

Adjustment of Grievances

(a) A Duly Accredited Representative who believes any provision of this Agreement has not been or is not being properly applied or interpreted shall have the right within ten (10) days after such application has been ascertained by the Brotherhood to protest such application in writing to the supervisor, as provided for in Article 30 (e), who shall evaluate such protest and render a decision in writing within ten (10) days.

(b) If the case is not settled, it may be appealed in writing within forty-five (45) days to the department head or other equivalent officer designated by the Company and in the established order of succession up to and including the highest official or their representative, each of whom, shall render a decision in writing within thirty (30) days.

(c) An employee who believes that he has been or is being unjustly dealt with shall have the right to present his grievance in writing within ten (10) days to his supervisor, as provided for in Article 30 (e), who shall evaluate the grievance and render a decision in writing within ten (10) days.

(d) If the grievance is not settled, it may be appealed in writing within forty-five (45) days to the department head or other equivalent officer and in the established order of succession up to and including the highest official or

their representative, each of whom shall render a decision in writing within thirty (30) days.

(e) Any dispute not settled under the provisions of this Article may be referred to the Board of Adjustment as provided for in Article 43 of this Agreement by the Company or properly authorized Duly Accredited Representative within ninety (90) days.

(f) When time is claimed in writing and such claim is disallowed, the employee making the claim and the Local Chairman shall be notified in writing the reason for non-allowance.

. . . . . .

[fol. 30]

Article 43

Board of Adjustment

(a) There is hereby established, pursuant to the provisions of the Railway Labor Act, as amended, a Capital-Brotherhood Board of Adjustment, hereinafter referred to as the "Board" which shall handle such matters as are properly referred to it.

(b) The Board shall be composed of four (4) members; two (2) selected by the Company and two (2) selected by the Brotherhood.

(c) The members of the Board shall continue to serve until such time as the parties select their successors, which may be done at any time except during the time when the Board is holding session.

(d) This Board shall have no jurisdiction whatsoever over proposals or disputes relating to general changes in hours of work, rates of pay, rules and working conditions.

(e) The Board will meet in Washington, D. C. (unless otherwise mutually agreed) on proper call by the Chairman or Vice-Chairman and shall continue in session until all matters before it are heard.

(f) The members of the Board shall select a Chairman and Vice-Chairman whose term of office shall be one (1)

session, provided that the offices of Chairman and Vice-Chairman shall be filled alternately by a member representative of the Company and a member representative of the Brotherhood; that is, when a Brotherhood member is Chairman a Company member shall be Vice-Chairman, and vice versa.

[fol. 31] (g) The Chairman, or in his absence the Vice-Chairman, shall preside at meetings of the Board, and each member of the Board shall have a vote on the adoption of all decisions of the Board.

(h) A dispute submitted to the Board in the form of a joint submission agreed to by all parties, shall state:

1. The name of the employee involved.
2. A statement that an attempt has been made to obtain an adjustment of the dispute in the manner provided in Articles 30 and 31 of this Agreement, and that the parties have failed to reach in such manner a satisfactory adjustment.
3. A statement of the nature of the dispute.
4. The position or contention of the Brotherhood.
5. The position or contention of the Company.

(i) If the parties to the dispute cannot agree on a joint submission, either party may submit the dispute by petition which shall include all the information required in Items 1, 2 and 3 of paragraph (h) of this Article and also the position of the party submitting the dispute. Upon receipt of an ex parte submission, the Chairman shall notify the other party to the dispute at least twenty (20) days prior to the date set for the hearing, and said other party shall have the right within fifteen (15) days to file seven (7) copies of statement of its position with the Chairman of the Board. Upon receipt of the statement from the other party, the Chairman will promptly furnish each party with a copy of the statement of the other party's position.

(j) Five (5) copies of each joint submission, or seven (7) copies of each ex parte petition, shall be delivered to

the Chairman. Upon receiving a joint submission or ex parte petition, the Chairman and Vice-Chairman shall set a day for hearing which shall be within sixty (60) days. The Board shall give notice of all hearings to all parties involved in any dispute submitted to it and the same right of representation before the Board will be afforded as in Articles 30 and 31. Such Representatives may present the dispute in such manner as they deem to their best interest.

(k) The Board may summon any necessary witnesses and call for relevant non-confidential records of the Company and the employee involved.

[fol. 32] (l) A majority vote of all members of the Board shall be competent to make a finding or a decision with respect to any dispute properly submitted to it, and such finding or decision shall be final and binding upon the parties to such dispute.

(m) Upon failure of the Board to agree upon a finding or decision because of inability to secure a majority vote of all members of the Board, the Board shall notify the parties to the dispute who will meet and select an impartial person to be known as "Referee" to sit with the Board as an additional member thereof in the further hearing and determination of the case. If the parties are unable to agree upon the selection of such additional member, the Company and/or the Brotherhood may then within sixty (60) days request the National Mediation Board to name such additional member as a "Referee", and when so named, the Board shall immediately arrange for a determination of the dispute by such "Referee."

(n) Findings and decision of the Board shall be stated in writing, and in each case a copy of the finding or decision shall be furnished the Company, the Brotherhood and such employee or employees are are involved in the dispute. If a dispute arises as to the interpretation of the findings or the decision, upon request of the Company, or the Brotherhood, the Board, as finally constituted, shall interpret the findings or decision in the light of the facts stated as evidence presented in connection with its record and hearing of the case.

(o) The Board shall keep a complete and accurate record of all matters submitted for its consideration and of all findings and decisions made.

(p) All expenses of the Board, including those incurred by reason of participation of a "Referee" in the determination of the controversy, as herein provided, shall be borne one-half by the Company and one-half by the Brotherhood. The salary or compensation of members of the Board shall be paid by the parties selecting such members. Board members who are employees of the Company shall be granted necessary leaves of absence. Subject to being available, Board members shall receive free transportation over the lines of the Company from point of duty to point of meeting and return for the purpose of attending meetings of the Board.

[fol. 33] (q) Each of the parties hereto will assume the compensation, travel expense, and other expenses of the witnesses called or summoned by it. So far as space is available, witnesses who are employees of the Company shall receive free transportation over the lines of the Company or the lines of other companies with which the Company has exchange or reciprocal transportation agreements from point of duty or assignment to the point at which they must appear as witnesses, and return, to the extent permitted by law.

(r) It is understood and agreed that each and every Board member shall be free to discharge his duty in an independent manner without fear that his individual relations with the Company or with the employees hereunder may be affected in any manner by any action taken by him in good faith in his capacity as a Board member. The parties hereto further mutually agree that each party shall and will specifically instruct each Board member selected, that he shall at all times while serving in that capacity act not as a partisan or advocate of partisan group or cause, but shall act and serve solely to render impartial findings and just decisions.

Article 44

Duration

This Agreement, entered into 3rd day of August, 1959, shall become effective as of August 3, 1959, except for wages, and shall continue in full force and effect until February 1, 1962, and thereafter unless thirty (30) days written notice is served by either party signatory thereto as provided in the Railway Labor Act, as amended.

Wages shall become effective as shown on Attachment A and shall continue in full force and effect until February 1, 1962, and thereafter unless thirty (30) days written notice is served by either party signatory thereto as provided in the Railway Labor Act, as amended.

Wages shall become effective as shown on Attachment A and shall continue in full force and effect until February 1, 1962, and thereafter unless thirty (30) days written notice is served by either party signatory thereto as provided in the Railway Labor Act, as amended.

[fol. 34]

For Capital Airlines, Inc.
S/Robert J. Wilson
Vice President

WITNESSED:

S/R. M. Averill
S/H. G. Biermann
S/B. W. Gamborg
S/Rex D. Garrell

For Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees

S/T. L. Creekmore
General Chairman

WITNESSED:

S/Doyle McMahan
Vice General Chairman
S/Arthur W. Read
Vice General Chairman
S/William Kendall
Vice General Chairman

S/Paul Rhoads
Vice General Chairman

APPROVED:

S/C. L. Dennis
Vice Grand President

* * * * * * *

[fol. 35]

UNION SECURITY AGREEMENT

between

CAPITAL AIRLINES, INC.

and

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

representing

CLERICAL, OFFICE, STORES, FLEET AND PASSENGER SERVICE AND RELATED EMPLOYEES

This Agreement is made and entered into in accordance with the provisions of the Railway Labor Act, as amended, by and between Capital Airlines, Inc., hereinafter referred to as the "Company", and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, hereinafter referred to as the "Brotherhood", as representative of the employees in the classifications listed in Article 1 of the collective bargaining agreement between the parties hereto dated July 29, 1959, amending the agreement of January 1, 1952.

NOW, THEREFORE, it is mutually agreed as follows:

There is hereby established a Union Security and Dues Check Off provision for employees of Capital Airlines, Inc., covered by the terms of the basic agreement above referred to, subject to the following conditions and provisions:

1. Except as set forth in paragraph 2, hereof, each employee who on the 1st day of February, 1959, was a member in good standing of the Brotherhood in accordance with the Brotherhood's "Constitution of the Grand Lodge, System Board and Local Lodges" and each employee who becomes a member of the Brotherhood after such date shall, as a condition of continued employment, maintain his membership in good standing in the Brotherhood, and each employee hired as a new employee of the Company on or [fol. 36] after the 1st day of February, 1959, shall, within ninety (90) days after the commencement of such employment, become a member of and thereafter maintain membership in good standing in the Brotherhood; provided that such condition shall not apply with respect to an employee to whom such membership is not available under the same terms and conditions as are generally applicable to any other member of his classification or with respect to any employee to whom membership is denied or whose membership is terminated for any reason other than the failure of the employee to tender the initiation fees, monthly dues and assessments uniformly required of other employees as a condition of acquiring or retaining membership.

a. For the purpose of this Agreement, "membership in good standing in the 'Brotherhood'" shall consist of the tender or payment by the employee of initiation fees uniformly required of other employees of like status, plus the payment of dues which become due after the effective date of this Agreement for each month during which the employee is actively engaged in a position to which this Agreement is applicable, not later than the last day of the second calendar month, as may be levied in accordance with the procedures set forth in the Brotherhood's "Constitution of the Grand Lodge, System and Local Lodges."

2. This Agreement shall not apply to an employee who occupies one of the positions set forth in Negotiated List No. 1. However, such employee is free to become a member of the organization at his option but he is also free to discontinue his membership at any time.

3. An employee who, under the provisions of this Agreement is required to maintain membership in good standing in the Brotherhood and who subsequently is transferred or assigned to a position not covered by the terms of the basic Agreement, or an employee who is on leave of absence for a continuous period of ninety (90) days, or an employee who is on lay-off status, shall not be required to maintain membership during such period that he may be in a position not covered by the basic Agreement, or on leave of absence, or on lay-off status but he may maintain membership during such period if he desires to do so. However, upon return to a position with the Company [fol. 37] wherein the employee is required to maintain membership under the provisions of this Agreement, he shall within 35 calendar days from the date of his return to such position, be required to become and maintain membership in good standing in the Brotherhood.

4. The Brotherhood, through an authorized officer or representative, will notify the Director of Personnel of the Company in writing of any employee who, by reason of failure to comply with the terms of this Agreement, is not entitled to continued employment. Upon receipt of such notice, the Company will, as promptly as possible, but within ten (10) days of such receipt, so notify the employee in writing by certified mail, by personal delivery evidenced by a receipt. Any such employee who disputes the fact that he is not entitled to continued employment may make written request for a hearing thereon within fifteen (15) days after receiving such notice. Such written request by the employee for a hearing shall be addressed to the Director of Personnel with a copy to the General Chairman of the Brotherhood. Thereafter, hearings will be held and the employee shall be entitled to such appeals as are provided for under the provisions of Articles 30 and 43 of the Basic Agreement. The receipt of a request for a hearing from the employee within the time limited shall operate to stay the action on the termination of employment until the hearing is held and the decision is rendered and, in case of appeal from such decision, until final disposition of the matter pursuant to the provisions of said Articles 30 and 43 of the Basic Agreement. In the event the employee

concerned fails to request a hearing as provided herein, the Company shall proceed to terminate his employment not later than thirty (30) days from the receipt of the above described notice from the Brotherhood except as herein otherwise provided in the case where a qualified replacement is not available. In those cases where the employee files a request for a hearing and it is finally decided that the employee is not entitled to continued employment, the Company shall proceed to terminate his employment not later than twenty (20) days from the date upon which such decision becomes final and is not subject to appeal.

5. An employee terminated under the provisions of this Agreement shall be deemed to have been "discharged for [fol. 38] cause" within the meaning of the terms of the Basic Agreement and the Company shall not be liable for any time or wage or pay claim for any employee terminated by the Company under the provisions of this Agreement pursuant to a written notice by an authorized Brotherhood representative.

6. The General Chairman of the Brotherhood shall notify the Company in writing of the names, titles and addresses of the officers or representatives who are authorized to serve and receive the notices described in this Agreement.

7. Other provisions of this Agreement to the contrary notwithstanding, the Company shall not be required to terminate the employment of any employee until the services of a qualified replacement are available, except that the provisions of this paragraph 7 shall not permit the Company to retain an employee in excess of ninety (90) days from the date upon which the termination would otherwise become effective under the provisions of this Agreement.

8. *Dues Check-Off*

(a) During the life of this Agreement the Company will deduct from the pay of each member of the Brotherhood and remit to the Brotherhood monthly membership dues uniformly levied in accordance with the Rail-

way Labor Act, as amended, and the "Constitution of the Grand Lodge, System Board and Local Lodges" of the Brotherhood provided such member of the Brotherhood voluntarily executes the agreed form, which is hereinafter included in this Agreement to be known as "check-off form", which shall be prepared and furnished by the Brotherhood. The Company will not be required to deduct monthly membership dues from the pay of an employee covered by this Agreement unless (1) the Company has received a check-off form and has not received a notice of revocation thereof, and (2) the dues for the employee conform to the applicable dues for employees of his classification at his point on the system.

• • • • • • • •

[fol. 39]

EXHIBIT B TO THE COMPLAINT

NATIONAL MEDIATION BOARD
Washington

(Letterhead)

INTERPRETATION NO. 93

CASE NO. A-6037

August 25, 1961

In the Matter of

Agreement between Capital Airlines, Inc. and all that class of Clerical, Office, Stores, Fleet and Passenger Service Employes thereon represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes

---

On May 29, 1961 the attorneys for the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes filed with the National Media-

tion Board an application for interpretation of the agreement reached in Mediation Case No. A-6037, Capital Airlines, Inc. and employes of that carrier represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes. This application was made pursuant to Section 5, Second, of the Railway Labor Act.

On June 23, 1961 the Board issued a notice of hearing on this petition and such hearing was held in Washington, D. C., on July 11, 1961 before Board Member Francis A. O'Neill, Jr. Briefs were subsequently filed by United Air Lines, Inc. and the Brotherhood of Railway and Steamship Clerks.

THE ISSUES

The specific question on which the interpretation was requested by the Brotherhood involves the language of Article 1(b) of the agreement reached in mediation on August 3, 1959 between the Brotherhood and Capital Airlines, Inc., reading as follows:

Article 1(b)

"All provisions of this Agreement shall be binding upon the successors or assigns of the Company and in case of a consolidation or merger, the Company will notify the Brotherhood at least ninety (90) days prior to such consolidation, or merger, and representatives of the Company and the Brotherhood will meet and nego- [fol. 40] tiate for the procedure to be followed and the protection to be afforded the employees involved."

Article 1(b) in the agreement of August 3, 1959 above quoted resulted from a notice served by the Brotherhood on Capital Airlines, Inc. under date of October 21, 1958 for certain changes, modifications and additions to the agreement then in effect between the parties.

The specific request of the Brotherhood in the application of May 29, 1961 was that the National Mediation Board "determine whether Article 1(b) of the agreement between Capital Airlines, Inc. and the Brotherhood does in fact make the obligation of said agreement binding upon

United Air Lines, Inc. as a successor or assign of Capital Airlines, Inc." This request was modified in a statement made by Vice Grand President Dennis of the Brotherhood during the hearing held on July 11, 1961, and in the reply of the Brotherhood dated July 17, 1961, to the statement of the United Air Lines submitted at the hearing.

The revised position of the Brotherhood reads as follows:

> "It is the position of the Brotherhood that this language means exactly what it says and *should be interpreted as follows:*
>
> "First: All provisions of the agreement shall be binding upon any company which consolidates or merges with Capital or into which Capital is merged or which in any other manner becomes a successor of Capital.
>
> "Second: Capital is required to meet with the Brotherhood at least 90 days prior to the effective date of such consolidation or merger and negotiate for the procedure to be followed in applying the provisions of the agreement upon such consolidation or merger to the employees covered by the agreement and the protection to be accorded such employees upon such consolidation or merger, and to have preserved its freedom of action with the other party to the merger so an effective arrangement can be negotiated."

DISCUSSION

The revised request of the Brotherhood of Railway and Steamship Clerks for this interpretation, as shown above, is in two parts. First, they contend that the language should be interpreted to mean all provisions of the agreement shall be binding upon any company which consolidates or merges with Capital Airlines, or into which Capital Airlines is merged, or which in any other manner becomes [fol. 41] a successor of Capital Airlines. Specific reference to United was eliminated.

In the written statement of Vice Grand President Dennis of the Brotherhood placed in the record during the July 11, 1961 hearing, he states on page 9 that the Brotherhood was of the belief that Section III of the merger agree-

ment between Capital Airlines, Inc. and United Air Lines, Inc., dated August 11, 1960, constituted an assumption by United Air Lines of the obligations of the agreement of August 3, 1959, on which an interpretation is being requested by the Brotherhood. Also, on page 14 of Mr. Dennis' statement in paragraph 5, he states "We do not seek a decision to the effect that either Capital or United has violated any obligation, but simply what is the obligation under the agreement."

After reviewing the record of mediation in NMB Case No. A-6037, as well as the transcript of hearing and briefs submitted by the Brotherhood and United Air Lines, Inc., this Board is of the opinion that the language of Article 1(b) of the agreement of August 3, 1959, reading "all provisions of this agreement shall be binding upon the successors and assigns of the company" is clear and unambiguous. In other words, the language means just what it says and we so find.

It must be pointed out, however, that the mediation agreement was executed on August 3, 1959, while the merger agreement between Capital and United was executed on August 11, 1960. Section 5, Second, of the Railway Labor Act, in our view, delegates no authority to this Board to interpret or construe the merger agreement, which is a document foreign to its processes. The legal authorities cited by the Brotherhood may sustain its position, but this Board lacks jurisdiction to do anything more by interpretation than to construe the instrument produced through its mediatory function. It is true that the language relied upon looks to the future, but can it be said that the quoted provision clothes this Board with authority to pass upon issues which arise out of subsequent developments such as mergers or consolidations? We think not. In sum, we find that the language is clear and unambiguous, but fail to find authority to spell out the rights and obligations of the parties in the situation presented here.

The second request of the Brotherhood is that the Board interpret the following language of Article 1(b) of the August 3, 1959 agreement,

> ". . . and in case of a consolidation or merger, the Company will notify the Brotherhood at least ninety

(90) days prior to such consolidation or merger, and representatives of the Company and the Brotherhood will meet and negotiate for the procedure to be followed and the protection to be afforded the employees involved."

[fol. 42] to mean that in the event of a consolidation or merger affecting Capital, that carrier was required to negotiate with the Brotherhood at a time and under circumstances which would leave it free to make an effective agreement for the procedure to be followed and the protection to be accorded Capital employees involved in the merger.

We find as a fact that the quoted language appears in the agreement between Capital Airlines and the Brotherhood of Railway and Steamship Clerks and that such agreement was made in mediation. Under the terms of the agreement, Capital obligated itself to notify the Brotherhood at least ninety (90) days prior to consolidation or merger, following which representatives of the Company and the Brotherhood were obligated to meet and treat on specified subjects.

CONCLUSION

The application for an interpretation, pursuant to Section 5, Second, of the Railway Labor Act, filed by the Brotherhood of Railway and Steamship Clerks, is disposed of in accordance with the foregoing findings.

By direction of the NATIONAL MEDIATION BOARD.

/s/ E. C. Thompson

E. C. Thompson
Executive Secretary

In the United States District Court

Motion of Defendant to Dismiss or for Summary Judgment—Filed December 26, 1961

Defendant United Air Lines, Inc. moves for dismissal of the Complaint or for summary judgment and, as grounds in support thereof, states as follows:

1. The Court is without jurisdiction of this cause since it relates to a dispute as to who are the representatives under the Railway Labor Act of certain of the employees of United Air Lines, Inc. Exclusive jurisdiction to determine such a dispute vests with the National Mediation Board under the provisions [fol. 43] of Section 2, Ninth, of the Railway Labor Act (45 U.S.C. Section 152, Ninth).

2. If the relief requested by plaintiff were granted, United would be required to treat with a bargaining representative for a minority of a craft or class of employees, contrary to the provisions of the Railway Labor Act under which a carrier may be compelled to deal only with the representative designated by a majority of the craft or class.

3. It is apparent from the face of the Agreement between plaintiff and Capital Airlines, Inc. (Exhibit A to the Complaint), which Agreement plaintiff asks the Court to declare is binding upon United, that the Agreement was not intended to be and can not be—either legally or practically—applied to less than the entire craft or class of employees covered under its provisions.

4. The International Association of Machinists now represents approximately 530 employees for whom the plaintiff here seeks representation rights. The relief requested herein cannot be granted without adversely affecting the rights of that labor organization under the Railway Labor Act and under its agreement with United. Hence, if the Court concludes it has jurisdiction of this cause, then the International Association [fol. 44] of Machinists is an indispensable party to this action, but has not been named as a party by the plaintiff.

This motion is based upon the facts alleged in the Complaint and upon the facts set forth in the affidavits submitted herewith of Charles M. Mason, Senior Vice President—Personnel of United, S. Szalma, Staff Assistant—Union Relations, Transportation Services Administration

of United and C. Pate Hutchens, Jr., Administrative Assistant to the Director of Personnel, Field Services of United.

Jack G. Evans, 1200 Union Central Building, Cincinnati 2, Ohio;

H. Templeton Brown, Stuart Bernstein, Edward R. Lev, 231 South La Salle Street, Chicago 4, Illinois, Attorneys for United Air Lines, Inc.

Dinsmore, Shohl, Barrett, Coates & Deupree, Cincinnati, Ohio, MA 1-6747;

Mayer, Friedlich, Spiess, Tierney, Brown & Platt, Chicago, Illinois, Of Counsel.

AFFIDAVIT OF CHARLES M. MASON TO MOTION TO DISMISS OR FOR SUMMARY JUDGMENT—Filed December 26, 1961

State of Illinois,
County of Cook, ss.

CHARLES M. MASON, being first duly sworn, on oath deposes and says:

1. I am Senior Vice President—Personnel of United Air Lines, Inc. ("United"). I am responsible for and have knowledge of all activities of United connected with and bearing upon the employee relations phases of the merger [fol. 45] of United and Capital Airlines, Inc. ("Capital").

2. Immediately prior to the merger, United had approximately 21,000 non-management employees. All but approximately 7,500 of these were represented by labor organizations. United had at that time twelve collective bargaining agreements with nine different labor organizations. These are on a system-wide basis and cover all United employees in the classifications represented by the contracting union.

3. Immediately prior to the merger, Capital had approximately 6,500 non-management employees, approximately 6,000 of whom were represented by labor organizations under six collective bargaining agreements.

4. In United's study of the proposals leading to the merger agreement with Capital, United considered how the employees of Capital would be integrated with United's employees. In view of the requirements of the Railway Labor Act prescribing collective bargaining relationships on a system-wide basis, United determined that it was required to absorb the Capital employees into the applicable United groups of employees, organized or unorganized. Thus each group of Capital employees comparable to an existing group at United would be integrated into the United group, and would be subject to the same rates of pay, rules and working conditions as the United employees. The employees falling into categories under existing United collective bargaining agreements would be subject to those agreements; those in categories unorganized at United would be subject to the same uniform United personnel regulations which establish the rates of pay and working conditions of United employees who are not represented by a labor organization.

[fol. 46] 5. This policy of applying uniform rates of pay and working conditions to all employees in the same categories was, in United's view, not only required under the Railway Labor Act, but as a practical matter was essential. It would have been virtually impossible to plan and operate efficiently if employees working side by side and performing the same duties were to receive different rates of pay and be subject to different working conditions depending upon whether they were United or Capital employees prior to the merger.

6. United's intention respecting its anticipated method of integrating the employees of the two companies in the event the Civil Aeronautics Board ("CAB") was to approve the merger was stated by me as United's first witness testifying on personnel problems relating to the merger in the hearings held by the CAB on the proposed merger. The only labor organization which objected to

United's proposal respecting the integration of Capital employees into existing United groups was the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees ("Brotherhood"), plaintiff herein, which then was the bargaining representative for a group of Capital employees. The Brotherhood requested the Board to impose as a condition on the approval of the merger a requirement that United accept and recognize the labor agreement then in effect between the Brotherhood and Capital. The CAB declined to do so. In its opinion in support of its Order No. E-16605, approving the merger, dated April 3, 1961, the Board stated with respect to this request by the Brotherhood:

> ". . . Capital and United should jointly or severally [fol. 47] give at least forty-five days' notice to the employees who will be affected as a result of the merger by a change or loss of representation and collective bargaining agreement. This would then place the matter as a problem to be worked out between the companies and employees, in accordance with regular procedures applicable to the matter of representation and agreement."

Such notice was posted by United and Capital on April 15, 1961, and copies were sent to all authorized representatives of employees of United and Capital, including Brotherhood. A copy of this notice is attached hereto as Exhibit 1.

7. As a condition of its approval of the merger, the CAB imposed certain labor protective provisions as an Appendix to its Order approving the merger. The Order and Appendix are attached hereto as Exhibit 2.

8. The Brotherhood appealed to the United States Court of Appeals for the District of Columbia the issue of the CAB failure to impose as a condition of the merger the requirement that United accept its collective bargaining agreement with Capital and moved for a stay pending review, which motion was denied. United intervened in that proceeding and opposed the motion. In its answer to the motion for stay, the CAB stated:

"The Board did not accede to Brotherhood's contention that the Capital acquisition should be 'conditioned' upon the assumption by United of the collective bargaining agreement. Neither did it purport to pass on the issue of whether United would be justified, as a matter of contract or labor law, in ignoring the [fol. 48] agreement. In these circumstances, and since Government counsel do not know the effect which issuance of the stay here sought might have upon United's operation of the merged system, we leave the argument to the private parties."

After the submission of memoranda and oral argument the Court denied Brotherhood's motion.

9. With respect to the appeal on its merits, the Brotherhood did not meet the original briefing schedule set by the Court of Appeals, moved to extend this schedule, and then moved to postpone the proceeding indefinitely. Finally, on November 6, 1961, the Brotherhood withdrew its appeal with the acquiescence of the other parties.

10. During the pendency of the proceeding in the Court of Appeals, the Brotherhood filed its application with the National Mediation Board ("NMB") for an interpretation of the collective bargaining it had with Capital. The Interpretation of the NMB is Exhibit B to the Complaint herein.

11. The opposition of the Brotherhood to United's original policy of integration, and its continued opposition since then, arises out of a historical difference in organization of certain categories of employees on United and Capital. Since 1947, the Brotherhood had represented a group of employees at Capital pursuant to a National Mediation Board election known as the clerical, office, stores, fleet and passenger service employees. Immediately prior to the merger there were approximately 2,700 Capital employees in this group covered by collective bargaining agreement between Brotherhood and Capital. The same classifications of employees at United, however, have not been organized [fol. 49] into a single grouping. In fact, in 1945 the National Mediation Board conducted an election at United

in which it treated as two separate crafts or classes of employees for bargaining under the Railway Labor Act the cargo clerks and handlers, and the stockroom attendants. Each of these classifications at United was part of the classification at Capital represented by the Brotherhood. At United these two separate groups have been represented since 1948 by the International Association of Machinists ("IAM"). The cargo clerks and handlers are now known as ramp employees, and the stockroom attendants are known as stores employees. These two separate groups are now under a single agreement which United maintains with the IAM, known as the "Ramp and Stores Agreement." A copy of the current Ramp and Stores Agreement is attached hereto as Exhibit 3.

12. There were at United immediately prior to the merger approximately 10,000 employees in the grouping comparable to that containing the approximately 2,700 employees at Capital represented by the Brotherhood. Of these 10,000 employees at United, approximately 2,200 are represented by the IAM under the Ramp and Stores Agreement. The remaining 7,800 employees are covered under United's personnel regulations and are not represented by a labor organization.

13. Upon the effectuation of the merger, the former Capital employees performing the work covered under the United-IAM Ramp and Stores Agreement came under that Agreement. Approximately 530 of the 2,700 former Capital employees who were represented by the Brotherhood while at Capital are now represented by the IAM at United. Letters of Agreement have been entered into between United and the IAM relating to the integration of [fol. 50] the Ramp and Stores employees of United and Capital. A copy of these Letters is attached hereto as Exhibit 4. Brotherhood was invited to participate in the negotiations concerning the seniority integration of these employees but declined the invitation.

14. The 2,700 former Capital employees for whom the Brotherhood is here seeking representation rights have been completely integrated into United's system. They are working side by side with other United employees in the

same job classifications. They are receiving the same rates of pay and benefits and are subject to the same working conditions as all other United employees in comparable jobs. Those subject to the IAM Ramp and Stores Agreement are subject to the terms and conditions of that Agreement. Those who are now part of United's unorganized group are under United's uniform personnel regulations as are other unorganized United employees.

15. United's personnel regulations, which are now applicable to the approximately 2,170 former Capital employees who were formerly represented by the Brotherhood when they were Capital employees, provide overall wages and benefits which are more beneficial to these employees than those provided in the Capital-Brotherhood agreement. For example, the wage scale for Ticket Sales Agent at United ranges from $350 to $455, and at Capital under the Brotherhood agreement from $318 to $418; the maximum vacation for these employees while employed by Capital under the Brotherhood agreement was 3 weeks per year after 12 years of service, a level reached after 10 years at United where the maximum vacation is 20 working days per year; while at Capital the employee paid for [fol. 51] the entire cost of his uniform, whereas United pays one-half of the initial cost; United offers a stock purchase plan in which it matches 15% of the employee contributions—Capital had no such plan; United pays one-half of the cost of accident and sickness insurance for these employees—Capital paid none; these employees receive $5,000 of free group life insurance from United, and the option to purchase additional life insurance up to $10,000—Capital provided no free life insurance, but an option to purchase up to $7,000 of such insurance; these employees are eligible to participate in United's retirement income plan, which provides greater retirement benefits than were available to them at Capital.

16. The former Capital employees who are now subject to United's personnel regulations have been given full seniority credit for all prior service with Capital. United has established a grievance program for these employees

with ultimate review by W. A. Patterson, United's President.

17. The labor protective provisions imposed by the CAB as a condition of its approval of the merger provide additional protection to the rights of all employees of both Capital and United. These provisions require United to maintain compensation levels for at least four years. Reimbursement for expenses incident to transfers as a result of the merger are provided. Section 13 of the labor protective provisions provide arbitration machinery to resolve disputes arising with respect to the protection provided. The CAB order approving the merger reserves jurisdiction to amend, modify or add to the labor protective pro- [fol. 52] visions (see Exhibit 2 to this Affidavit.)

18. The Brotherhood has been engaged, since prior to the merger, in an organizing campaign in an effort to gain representation rights for the entire group of employees at United in the classifications which Brotherhood formerly represented at Capital. The various legal proceedings which Brotherhood has instituted before the CAB, NMB, Court of Appeals and this Court in an effort to impose upon United a collective bargaining agreement which it had with Capital (and which would provide less favorable benefits than the employees now enjoy) have been utilized by the Brotherhood as part of its organization campaign. The most recent example of this is the attached Exhibit 5, describing the filing of the suit herein, which was distributed to United employees recently.

19. Aside from the obvious disadvantages to the employees involved, the imposition of the Capital-Brotherhood agreement on United would require United to deal with a labor organization for a minority of a craft or class, contrary to the requirements of the Railway Labor Act. The minority group of 2,700 employees is now geographically distributed throughout United's system and is completely integrated with United's 10,000 employees in comparable classifications. These employees are no longer separately identifiable, and their only distinction is that they formerly worked for Capital. In addition, the imposition of this agreement on United would create a jurisdictional

conflict between the IAM under the Ramp and Stores Agreement and the Brotherhood respecting the approximately 530 former Capital employees previously under the Brotherhood-Capital agreement and now represented by the IAM.

[fol. 53] CHARLES M. MASON

Subscribed and Sworn to before me this 20th day of December, 1961.

Catherine A. Vita, Notary Public.

(Seal)

EXHIBIT 1 TO AFFIDAVIT OF CHARLES M. MASON

NOTICE TO ALL EMPLOYEES
of
UNITED AIR LINES
and
CAPITAL AIRLINES

This is a joint notice to all employees of Capital Airlines and United Air Lines that on June 1, 1961, the two carriers intend to effectuate their merger as approved by the Civil Aeronautics Board (by its Order issued on April 3, 1961 in the United-Capital Merger Case). Accordingly, on the effective date of the merger, June 1, 1961, Capital Airlines, Inc. will cease to exist, United Air Lines, Inc. will be the surviving carrier, and the employees of Capital Airlines will become employees of United Air Lines and their classifications, rates of pay, rules and working conditions will be in accordance with the applicable working agreements between United Air Lines and the various labor organizations listed below or by Company regulations, except as otherwise agreed to by United Air Lines, Inc. and the representatives of its employees. In addition the labor protective provisions of the Civil Aeronautics Board will be applicable.

Written notices of more detailed changes to be effected by the merger as provided in the Board's Order will be forthcoming as more specific plans of the merged operation are developed. Such notices will be posted at all locations where employees affected by the intended changes are located and copies sent to the authorized representatives of the employees.

The following working Agreements presently are in effect [fol. 54] between United Air Lines and the labor organizations listed below:

Organization	*Agreement*
Air Line Dispatchers Association	1960-61 Dispatchers' Agreement
Air Line Employees Association, Int'l.	1960-61 Link Trainer Operators' and Flight Simulator Operators' Agreement
Air Line Pilots Association, Int'l.	1959 Pilots' Agreement
Air Line Stewards and Stewardesses Association, International	1957-59 Agreement
Communication Workers of America	1958-61 Agreement
International Association of Machinists	1961-62 Dining Service Agreement
" " " "	1961-62 Mechanics' Agreement
" " " "	1961-62 Ramp and Stores Agreement
" " " "	1961-62 Guards' Agreement
Society of Air Line Meteorologists	1959-61 Meteorologists' Agreement
Transport Workers Union of America, AFL-CIO	1959-61 Flight Navigators' Agreement
UNA Chapter, Flight Engineers' International Association, AFL-CIO	1958 Flight Engineers' Agreement

Job classifications, rates of pay, rules and working conditions of all employees of United Air Lines not covered by the foregoing working agreements are established by Company regulations of United Air Lines.

This notice is given jointly by Capital Airlines, Inc. and United Air Lines, Inc. in accordance with Section 11 of the Labor Protective Provisions set forth in the Order issued April 3, 1961 by the Civil Aeronautics Board in the United-Capital Merger Case.

CAPITAL AIRLINES, INC.	UNITED AIR LINES, INC.
/s/ David H. Baker	/s/ W. A. Patterson
David H. Baker, President	W. A. Patterson, President

Dated and posted April 15, 1961 on bulletin boards or other conspicuous places convenient to employees of Capital Airlines and United Air Lines. Copies sent by registered mail to all authorized representatives of any of the employees of both carriers.

[fol. 55]

EXHIBIT 2 TO AFFIDAVIT OF CHARLES M. MASON

Order No. E-[illegible]605

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 3rd day of April, 1961

Docket 11699

In the matter of the

UNITED-CAPITAL MERGER CASE

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That, subject to the conditions specified below, the merger of United Air Lines, Inc., and Capital Airlines, Inc., pursuant to joint application in Docket 11699, be and hereby is approved under section 408 of the Act:

2. That the approval granted herein is subject to the following conditions:

(a) That in accounting for the merger transaction the assets and liabilities shall be transferred to United at the values shown on the books of Capital as of the effective

date of the merger as defined in the merger agreement, with any differences between such book value and the purchase price to be entered in the acquisition adjustment account and held in suspense until all adjustments have been made for items not directly a part of the acquisition adjustment account, such as the recognition of income tax deferred through accelerated amortization of aircraft by Capital, merger integration costs, and other items of a capital nature; that the remainder in the acquisition adjustment account shall be amortized through income over the remaining life of the flight equipment acquired and the amounts so amortized in each quarterly accounting period shall be separately disclosed on CAB Form 41 reports; that any income tax loss carry-forward credit [fol. 56] resulting from the merger shall be taken up only in the periods in which realized; and that a plan of accounting for the foregoing items shall be submitted to the Board's Office of Carrier Accounts and Statistics for prior approval;

(b) That for rate-making or other regulatory purposes the approval granted herein shall not in any manner be relied upon by United as a basis for augmenting the investment value of assets acquired or as a basis for claiming an investment value in excess of the price paid for assets acquired nor shall such approval be deemed a determination for rate-making or other regulatory purposes of the fairness or reasonableness of any costs or charges claimed by Capital or United under the proposed merger;

(c) That, except as noted below, United shall be subject to the labor protective provisions set forth in the appendix to this order.

(d) That United shall not (i) serve Harrisburg, Pa., on Route 51; (ii) serve between Philadelphia, Pa., and Pittsburgh, Pa., except on flights which originate or terminate at Omaha, Nebr., or a point west thereof; and (iii) operate single-plane service between Buffalo, N. Y., and Detroit, Mich;

3. That at such time as United submits to the Board a statement indicating its full acceptance of the conditions

imposed by paragraph 2 above, and makes an appropriate showing that all necessary steps have been completed for the consummation of the aforementioned merger agreement, the certificates of public convenience and necessity held by Capital for Routes 14, 34, and 51 will be transferred to United by appropriate Board order, subject to a stay of the certificated authorizations for Routes 14 and 51 as described in paragraph 2(d) above;

4. That jurisdiction is hereby reserved to make such amendments, modifications, and additions to the protective labor conditions imposed by paragraph 2(c) above as circumstances may require.

By the Civil Aeronautics Board:

/s/ James L. Deegan

James L. Deegan
Acting Secretary

(SEAL)

[fol. 57]

APPENDIX A TO ORDER

Labor Protective Provisions

Section 1. The fundamental scope and purpose of the conditions specified in paragraph 2(c) of this order are to provide for compensatory allowances to employees who may be affected by the proposed merger of United and Capital approved by this order, and it is the intent that such conditions are to be restricted to those changes in employment solely due to and resulting from such merger. Fluctuations, rises and falls, and changes in volume or character of employment brought about solely by other causes are not covered by or intended to be covered by this order.

Section 2(a). The term "merger" as used herein means joint action by the two carriers whereby they unify, consolidate, merge, or pool in whole or in part their separate airline facilities or any of the operations or services previously performed by them through such separate facilities.

(b) The term "carrier" as used herein refers to either United or Capital or to the corporation surviving after consummation of the proposed merger of the two companies.

(c) The term "effective date of merger" as used herein shall mean the effective date of the amended certificates of public convenience and necessity transferred to United pursuant to the approval granted in this order.

(d) The term "employee" as used herein shall mean an employee of the carriers other than a temporary or part-time employee.

Section 3. Insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with Section 13.

Section 4(a). Subject to the applicable conditions set forth herein, no employee of either of the carriers involved in the merger who is continued in service shall as a result of the merger be placed in a worse position with respect to compensation than he occupied immediately prior to the effective date of such merger so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules, and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him immediately prior to such date, except however, that if he fails to exercise his seniority rights to secure another available position, [fol. 58] which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline.

(b) The protection afforded by the foregoing paragraph is hereby designated as a "displacement allowance" which

shall be determined in each instance in the manner hereinafter described. Any employee entitled to such an allowance is hereinafter referred to as a "displaced" employee.

(c) Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee and his total time paid for during the last twelve (12) months in which he performed service immediately preceding the date of his displacement (such twelve (12) months being hereinafter referred to as the "test period") and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and average monthly time paid for, which shall be the minimum amounts used to guarantee the displaced employee; and if his compensation in his current position is less in any month in which he performs work than the aforesaid average compensation, he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for during the test period.

(d) The protection afforded herein shall only apply to displacements occurring within a period of three years from the effective date of the merger (referred to herein as the claim period); and the period during which this protection is to be given (referred to herein as the protective period) shall extend for a period of four years from the date on which the employee is displaced.

Section 5(a). Any employee of either of the carriers participating in the merger who is deprived of employment as a result of said merger shall be accorded an allowance (hereinafter termed a dismissal allowance), based on length of service, which (except in the case of an employee with less than one year of service) shall be a monthly allowance equivalent in each instance to sixty percent (60%) of the average monthly compensation of the employee in question during the last twelve months of his

employment in which he earned compensation prior to the date he is first deprived of employment as a result of the [fol. 59] merger. This dismissal allowance will be made to each eligible employee, while unemployed, by United during a period beginning at the date he is first deprived of employment as a result of the merger and extending in each instance for a length of time determined and limited by the following schedule:

Length of Service	*Period of Payment*
1 year and less than 2 years	6 months
2 years " " " 3 years	12 months
3 years " " " 5 years	18 months
5 years " " " 10 years	36 months
10 years " " " 15 years	48 months
15 years and over	60 months

In the case of an employee with less than one year of service such employee shall not be covered by the benefits provided in this section, but shall receive such benefits, and only such benefits, as are provided by Section 7.

(b) For the purposes of this order, the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for one month's service for each month in which he performed any service (in any capacity whatsoever) and twelve such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization he will be given credit for performing service while so engaged on leave of absence from the service of the carrier: *Provided,* That in calculating the dismissal allowance for such an employee, such allowance shall be based upon the compensation paid such employee by the carrier during his last twelve (12) months of service on the company payroll and not on the compensation he may have been paid by the employee representative organization.

(c) An employee shall not be regarded as deprived of employment in case of his resignation, death, or on account of age or disability in accordance with the current rules and practices applicable to employees generally, dismissal for justifiable cause in accordance with the rules, or furlough because of reduction in forces due to seasonal requirements of the service; nor shall any employee be regarded as deprived of employment as the result of the merger who is not deprived of his employment within three years from the effective date of said merger.

(d) Each employee receiving a dismissal allowance shall [fol. 60] keep United informed of his address and the name and address of any other person by whom he may be regularly employed.

(e) The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished while he is absent from service, he will be entitled to the dismissal allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance on the basis of said position until the regular employee is available for service and thereafter shall revert to his previous status and will be given a dismissal allowance accordingly if any is due.

(f) An employee receiving a dismissal allowance shall be subject to call to return to service after being notified in accordance with the working agreement, and such employee may be required to return to the service of the employing carrier for other reasonably comparable employment for which he is physically and mentally qualified and which does not require a change in his place of residence, if his return does not infringe upon the employment rights of other employees under the working agreement.

(g) If an employee who is receiving a dismissal allowance returns to service the dismissal allowance shall cease while he is so reemployed and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a dismissal allowance. During the time of such reemployment, however, he

shall be entitled to protection in accordance with the provisions of Section 4.

(h) If an employee who is receiving a dismissal allowance obtains other employment, his dismissal allowance shall be reduced to the extent that the sum total of his earnings in such employment plus his allowance and any unemployment insurance benefit (or similar benefit) exceed the amount upon which his dismissal allowance is based: *Provided,* That this shall not apply to employees with less than one year's service.

(i) A dismissal allowance shall cease prior to the expiration of its prescribed period in the event of:

1. Failure without good cause to return to service after being notified of position for which he is eligible and as provided in paragraphs (f) and (g).
2. Resignation.

[fol. 61]

3. Death.
4. Retirement or on account of age or disability in accordance with the current rules and practices applicable to employees generally.
5. Dismissal for justifiable cause.

Section 6. An employee affected by the merger shall not during the applicable protective period be deprived of benefits attaching to his previous employment, such as hospitalization, relief, and the like.

Section 7. Any employee eligible to receive a dismissal allowance under Section 5 hereof may, at his option at the time of merger, resign and (in lieu of all other benefits and protections provided in this order) accept in a lump sum a separation allowance determined in accordance with the following schedule:

Length of Service	*Separation Allowance*
1 year and less than 2 years	3 months' pay
2 years " " " 3 years	6 months' pay
3 years " " " 5 years	9 months' pay
5 years and over	12 months' pay

In the case of employees with less than one year's service, five days' pay, at the straight time rate per working day of the position last occupied, for each full month in which they performed service will be paid as the lump sum.

(a) Length of service shall be computed as provided in Section 5.

(b) One month's pay shall be computed by multiplying by 30 the calendar daily rate of pay received by the employee in the position last occupied prior to time of the merger.

Section 8(a). Any employee who is retained in the service of the carrier surviving the merger (or who is later restored to service from the group of employees entitled to receive a dismissal allowance) who is required to change the point of his employment as a result of such merger, and is therefore required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects and for the traveling expenses of himself and members of his family, including living expenses for himself and his family and his own actual wage loss during the time necessary for such trans- [fol. 62] fer, and for a reasonable time thereafter (not to exceed two working days), used in securing a place of residence in his new location. The exact extent of the responsibility of the carrier under this provision and the ways and means of transportation shall be agreed upon in advance between the carrier and the affected employee or his representative. No claims for expenses under this section shall be allowed unless they are incurred within three years from the effective date of the merger, and the claim must be submitted within ninety (90) days after the expenses are incurred.

(b) Changes in place of residence subsequent to the initial change caused by the merger and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section.

Section 9(a). The following provisions shall apply, to the extent they are applicable in each instance, to any

employee who is retained in the service of the carriers involved in this merger (or who is later restored to such service from the group of employees entitled to receive a dismissal allowance) who is required to change the point of his employment as a result of such merger and is therefore required to move his place of residence.

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the merger to be unaffected thereby: *Provided, however,* That if the home is not sold within a substantial period of time after the merger, then the fair value of the home shall be determined as of a date as closely related to the date of sale as possible, with an agreed-upon adjustment being made to exclude any effect of the merger on such fair value. The carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party.

2. If the employee is under a contract to purchase his home, the carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligations under his contract.

3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the carrier shall protect him from all loss and cost in securing the cancellation of his said lease.

[fol. 63] (b) Changes in place of residence subsequent to the initial change caused by the merger and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section.

(c) No claim for loss shall be paid under the provisions of this section which is not presented within three years after the effective date of the merger.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee or his representative and the carrier, and, in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the employee or his representative and one by the carrier, respectively; these two shall endeavor by agreement within ten days after their appointment to select the third appraiser, or to select some person authorized to name the third appraiser; and in the event of failure to agree, then the Chairman of the National Mediation Board shall be requested to appoint the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the salary of the appraiser selected by such party.

Section 10. If either carrier, on or after July 19, 1960, shall rearrange or adjust its forces in anticipation of the merger, with the purpose or effect of depriving an employee of benefits to which he should be entitled under this order as an employee immediately affected by the merger, the provisions of this order shall apply to such an employee as of the date when he is so affected.

Section 11. United and Capital shall jointly or severally give at least forty-five (45) days' written notice containing a full and adequate statement of the proposed changes to be effected by the merger, including an estimate of the number of employees of each class, craft, or field of endeavor affected by the intended changes. Such notice shall be posted on bulletin boards or other conspicuous places convenient to the employees of said carriers, and a copy of the notice shall be sent by registered mail to all authorized representatives of any of the employees of both carriers.

[fol. 64] If requested in writing by any employee or employees of either carrier or the authorized representative of such employee or employees, the date and place of a meeting between said employees or their representatives and the representatives of the carriers to settle problems of the rearrangement of such employees arising out of and because of the merger shall be agreed upon within ten (10) days after such request is received by the carrier. The meeting shall commence within thirty (30) days from the date the request is received by the carrier.

In the event of a failure to agree upon a settlement of a problem or of problems presented at the meeting, the unsettled problems may be submitted by either party for adjustment in accordance with Section 13.

Section 12. No employee of either carrier shall, as a condition of eligibility for the protection afforded by the terms of this order, be required to accept employment with the surviving carrier that is not within the class, craft, or field of endeavor in which he was employed by either carrier on the date of this order.

Section 13. In the event that any dispute or controversy (except as to matters arising under Section 9) arises with respect to the protection provided herein, which cannot be settled by the carrier and the employee, or his authorized representative, within thirty days after the controversy arises, it may be referred, by either party, to an arbitration committee for consideration and determination, the formation of which committee, its duties, procedure, expenses, etc., shall be agreed upon by the carriers and the employees, or the duly authorized representatives of the employees.

[fol. 65]

EXHIBIT 3 TO AFFIDAVIT OF CHARLES M. MASON

1961-62

AGREEMENT

between

UNITED AIR LINES, INC.

and

THE INTERNATIONAL ASSOCIATION OF MACHINISTS

RAMP AND STORES AGREEMENT

[fol. 65]

EXHIBIT 3 TO AFFIDAVIT OF CHARLES M. MASON

[fol. 66]

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Legend:

Indicates paragraph revision as result of last negotiations

[fol. 67]

AGREEMENT

Between

UNITED AIR LINES, INC.

and

INTERNATIONAL ASSOCIATION OF MACHINISTS

This Agreement is made and entered into in accordance with the provisions of Title II of the Railway Labor Act, as amended, by and between United Air Lines, Inc. hereinafter referred to as the 'Company', and International Association of Machinists, hereinafter referred to as the 'Union'. (For purposes of identification, this Agreement shall be known as 'Ramp and Stores Agreement').

ARTICLE I

PURPOSE OF AGREEMENT

A. The purpose of this Agreement is, in the mutual interest of the Company and of the employees, to provide for the operation of the services of the Company under methods which will further, to the fullest extent possible, the safety of air transportation, the efficiency of operation, and the continuation of employment under conditions of reasonable hours, proper compensation, and reasonable working conditions. It is recognized by this Agreement to be the duty of the Company and of the employees to cooperate fully, both individually and collectively, for the advancement of that purpose.

B. No employee covered by this Agreement will be interfered with, restrained, coerced, or discriminated against by the Company, its officers or agents, because of membership in or lawful activity on behalf of the Union.

C. It is understood wherever in this Agreement em-
[fol. 68] ployees or jobs are referred to in the masculine gender, it shall be recognized as referring to both male and female employees.

ARTICLE II

SCOPE OF AGREEMENT

A. The company hereby recognizes the Union as the sole and exclusive bargaining agent for all classes and grades of Ramp Servicemen, Storekeeper, and Station Wagon Drivers employed by the Company, the Union having submitted satisfactory evidence to the Company on March 25, 1948 that a majority of such employees (formerly known as Cargomen-A, Cargomen-B, Lead Cargomen, Transportation Service Agents, Cabin Supplymen, Cabin Servicemen, Lead Cabin Supplymen, Lead Cabin Servicemen, Cabin Cleaners, Storekeepers, Stock Clerks, Lead Storekeepers, Warehousemen, Truck Drivers, and Station Wagon Drivers,) has designated the Union to represent them.

B. The Company's General Policy, Operating and other applicable Regulations shall be available to all employees at all points, and employees covered by this Agreement shall be governed by such Regulations and by all applicable rules, regulations and orders issued by properly designated authorities of the Company not in conflict with the terms of this Agreement. In addition, the Company shall cause to be compiled and issued to each present and new employee, a convenient sized book containing all applicable rules, regulations, and orders and shall furnish each employee with amendments or changes from time to time as amendments or changes are made. This book of rules shall be supplementary to, but shall not supersede the aforementioned regulations.

C. All work performed by the Company involving the work of all classes and grades of Ramp Servicemen, Storekeepers, and Station Wagon Drivers as described in the Work Classifications in Article IV of this Agreement, is recognized as coming within the jurisdiction of the International Association of Machinists and is covered by this Agreement. However, the provisions of this Agreement shall not be applied to Ramp Service work at other locations on the Company's system where such work is performed by employees classified in the composite job known as Station Agent which also includes some or all of the duties necessary

[fol. 69] to be performed in connection with communications, radio, ticket selling and other related station or office clerical work. The stations where Ramp Servicemen who are covered by this Agreement are located on the date of this agreement or will be located are: Boston, New York, Newark, Washington, Cleveland, Chicago, Omaha, Denver, Salt Lake, Los Angeles, Burbank, San Francisco, Oakland, Portland, Seattle, Detroit, and Philadelphia. The Company will not eliminate the classification of Ramp Servicemen at any station listed above without negotiating with the Union. It is further understood that at any time the Company finds it necessary to place additional stations on a comparable basis as those listed above, employees performing Ramp Service work exclusively shall be classified as Ramp Servicemen and the provisions of this Agreement shall apply. It is understood that the Company reserves the right to continue to contract out the types of work heretofore customarily contracted out or to contract out any work when its facilities or personnel are not sufficient or available. The Company reserves the right to contract out other work but if such work comes within the scope of this Agreement, notice will be served on the Union before such contracting takes place. After receipt of notice by the Union of intent to contract out such work, if such contracting indicates that any employee covered by this Agreement will be reduced, laid-off or transferred as a result, either party to this Agreement may serve notice of a desire to negotiate for the procedure to be followed and the protection to be afforded employees involved. Actual negotiations under this provision will be initiated within ten (10) days from receipt of a notice of desire to negotiate the matter and no employee effected will be reduced, laid-off or transferred in less than forty (40) days after receipt of such notice.

ARTICLE III

STATUS OF AGREEMENT

A. It is expressly understood and agreed that when this Agreement is accepted by the parties and signed by their authorized representatives, it will supersede any and all Agreements existing or previously executed between the

Company and any Union or individual affecting the craft or class of employees covered by this Agreement.

[fol. 70] B. It is further understood and agreed that all provisions of this Agreement shall be binding upon the successors or assigns of the Company for the duration of this Agreement. In case of a consolidation or merger, representatives of the Company and Union will meet without delay and negotiate for proper provisions for the protection of employee seniority and other property rights.

* * * * * * *

[fol. 71]

ARTICLE XV

BARGAINING AND GRIEVANCE PROCEDURE

A. In order to properly administer this Agreement and to dispose of all disputes or grievances which may arise under this Agreement or between the parties, the following procedure shall be followed:

[fol. 72] 1. The Union will be represented by not more than one (1) properly designated steward for each storeroom, warehouse, service station or subdivision thereof at each point on the System for each shift.

2. The Union will be further represented at each point where local lodges exist by a Local Committee, consisting of three (3) members elected by the local membership and in dealing with general officials of the Company by a System General Chairman and Executive Committee.

3. The Company will designate the representatives at each location where persons covered by this Agreement are employed who are empowered to settle all local grievances not involving change in Company policy, or interpretations, or changes in the intent and purpose of this Agreement.

4. The Union and Company will, at all times, keep the other party advised through written notice of any change in authorized representatives.

5. The System General Chairman of the Union shall be permitted, at any time, to enter facilities of the Company for the purpose of investigating grievances and disputes arising under this Agreement after contacting the Company officer in charge and advising him of the purpose of the visit.

B. For the presentation and adjustment of disputes or grievances that may arise, the procedure will be:

1. Any employee having a complaint or grievance in connection with the terms of employment or working conditions, may present his complaint or grievance to the steward of the Union, who in turn will discuss the matter with the employee's immediate supervisor and endeavor to arrive at a satisfactory adjustment of same.

2. If the steward or employee is not satisfied with the decision of the employee's immediate supervisor, the matter will be referred to the local Union committee in writing on a standard grievance form. The [fol. 73] local committee will then take the matter up with the official in charge at the Base or Station for adjustment, furnishing four (4) copies of the signed complaint to the Company representative, two (2) to be retained by the Company and two (2) to be returned to the Union representatives with the written decision.

3. If not then satisfactorily settled, the local committee and System General Chairman may appeal for consideration and decision to the employee's system Department Head or his designee.

4. If the local committee and System Chairman are dissatisfied with the decision of the official designated in paragraph 3. above, the matter may be appealed to the Chief Operating Officer of the Company or his designee. Further appeal, if desired, shall be to the System Board of Adjustment provided for in ARTICLE XVI of this Agreement.

5. In step number one (1), the employee's immediate supervisor will give his decision as soon as possible but not to exceed twenty-four (24) hours after discussion of the issue. If, as a result of his decision the Union decides to appeal, notice of such appeal accompanied by the standard grievance form must be given the official in charge at the location within ten (10) days of the date of the decision rendered in step number one (1), and the actual appeal must be perfected and submitted within thirty (30) days. After actual presentation of the issue, and final and oral discussion between representatives of the Company and Union, a written decision on the standard grievance form will be issued to the Union as soon as possible, but not to exceed seventy-two (72) hours after the final discussion. Appeals to the third and fourth step of the grievance procedure outlined above shall conform to the time limitations set forth for appeals to step number two (2) and Company representatives shall issue their decisions in writing on the standard grievance form as soon as possible, but not to exceed five (5) and ten (10) days respectively in steps number three (3) and four (4) after the final presentation. [fol. 74] 6. If not satisfactorily settled at the fourth step further appeal, if desired, shall be to the System Board of Adjustment as provided for in Article XVI of this Agreement.

C. Grievances involving wage claims must be filed promptly after the cause giving rise to the grievance is evident and wage claims will not be valid and collectible for a period earlier than thirty (30) days prior to the date of filing a grievance or the date the grievance arose, whichever is most recent.

D. Stewards and local Union Committeemen will be permitted, after reporting to their Supervisor, a reasonable amount of time during working hours to investigate or present grievances. In the event it is necessary to go to another work area they will report in with the Supervisor of the other work area. The Company will allow straight time

compensation for such investigation and presentations during working hours. The local Committeemen at the Maintenance Base will be allowed a reasonable amount of time for this purpose. Stewards and other local Committeemen will be allowed to a maximum of five (5) hours in any one (1) week for this purpose. Local Committeemen at the major line stations and at the Maintenance Base, notwithstanding the reference to shift assignments in Article IX, Paragraph B, will be assigned to the day shift if requested by the Union.

E. Necessary hearings and investigations called by the Company shall, insofar as possible, be conducted during regular business hours and all stewards, local committeemen and witnesses necessary for a proper hearing or investigation will be compensated at straight-time rate for all time spent attending such hearing or investigation.

F. No employee covered by this Agreement shall be discharged or suspended from the service without a prompt, fair and impartial investigation and may be represented and assisted at such investigation by Union representatives. At least forty-eight (48) hours prior to such investigation the employee and the Union shall be advised in writing of the precise charges against the employee. Nothing herein shall be construed as preventing the Company from holding an employee out of service pending such investigation.

[fol. 75] G. Any employee dissatisfied with the action of the Company in suspending or discharging him, may appeal from such action by filing an appeal to the third step of the grievance procedure as provided for in this Agreement and a hearing shall be held within ten (10) days of perfecting such appeal. Oral and written evidence may be introduced at such hearings and witnesses may be required to testify under oath. All decisions by Company representatives and all appeals filed by the employee or Union shall be in writing and shall conform to the time limitations set forth in the third and fourth steps of the grievance procedure.

H. If, as a result of any hearing or appeals therefrom, it is found the suspension or discharge was not justified, the employee shall be reinstated without loss of seniority and

made whole for any loss of pay he suffered by reason of his suspension or discharge, and his personnel records shall be corrected and cleared of such charge; or, if a suspension rather than discharge results, the employee shall have that time he has been held out of service credited against his period of suspension. In determining the amount of back wages due an employee who is reinstated as a result of the procedures outlined in this Agreement, the maximum liability of the Company shall be limited to the amount of normal wages he would have earned in the service of the Company had he not been discharged or suspended.

I. When it is mutually agreed that a stenographic report is to be taken by a public stenographer of any investigation or hearing provided for in this Agreement, the cost will be borne equally by both parties to the dispute. When it is not mutually agreed that a stenographic report of the proceedings be taken by a public stenographer, the stenographic record of any such investigation or hearing may be taken by either of the parties to the dispute. A copy of such stenographic record will be furnished to the other party to the dispute upon request at pro-rata cost. The cost of any additional copies requested by either party shall be borne by the party requesting them, whether the stenographic record is taken by mutual agreement or otherwise.

J. No steward or local committee member shall serve in such capacity while he is on leave of absence.

K. Any grievance which the Company may have against [fol. 76] the Union at any place on the System shall be presented by the Company's Chief Operating officer or his designee to the System Chairman. In the event the matter is not satisfactorily adjusted within two (2) weeks after such presentation it may be appealed to the System Board of Adjustment provided for herein.

L. All time limits for appeals and decisions shall be exclusive of Saturdays, Sundays, and Holidays.

ARTICLE XVI

SYSTEM BOARD OF ADJUSTMENT

A. In compliance with Section 204, Title II of the Railway Labor Act as amended, there is hereby established a System Board of Adjustment for the purpose of adjusting disputes or grievances which may arise under the terms of this Agreement and which are properly submitted to it after all steps for settling disputes and grievances as set forth in Article XV have been exhausted.

B. The System Board of Adjustment shall consist of three (3) members, one (1) appointed by the Company (hereinafter referred to as the Company Member), one (1) appointed by the Union (hereinafter referred to as the Union Member) and for each dispute one (1) member selected from a panel of potential referees in a manner agreeable to the Company and the Union (hereinafter referred to as the Neutral Member). The Company Member and the Union Member shall serve until their successors are duly appointed.

C. The Board shall have exclusive jurisdiction over disputes between any employee covered by this Agreement and the Company and between the Company and the Union, growing out of grievances concerning disciplinary action, rules, rates of pay or working conditions covered by this Agreement, or any amendment or supplement thereto, or out of the interpretation or application of any terms of this Agreement or any amendment or supplement thereto. The jurisdiction of the Board shall not extend to proposed changes in rules, basic rates of compensation, or working conditions covered by this Agreement or any amendments thereto. The Board shall not have jurisdiction or power to add to or subtract from this Agreement or any amendments thereto or any agreement between the parties.

[fol. 77] D. The Board shall consider any dispute properly submitted to it by any employee covered by this Agreement, by the System General Chairman of the Union or by the chief operating officer of the Company when such dispute has not been previously settled in accordance with the

terms provided for in this Agreement, provided that the dispute is filed with the Board within forty (40) calendar days after the procedure provided for in this Agreement has been exhausted. If a dispute is not filed within such time the action of the Company or Union shall become final and binding. The date the Submission is received by the Board shall determine the order of hearing, unless the parties mutually agree otherwise.

E. The Neutral Member of the Board shall preside at meetings and hearings of the Board and shall be designated as Chairman of the System Board of Adjustment. It shall be the responsibility of the Chairman to guide the parties in the presentation of testimony, exhibits, and argument at hearings to the end that a fair, prompt and orderly hearing of the dispute is afforded.

F. The Board shall meet in the City where the General Offices of United Air Lines, Inc. are maintained (unless a different place of meeting is agreed upon by the parties, with the consent of the Neutral).

G. All disputes properly referred to the Board for consideration shall be addressed to the Company Member and the Union Member, jointly. The Submission of the dispute to the Board shall include:

1. The question or questions at issue.

2. A statement of the specific Agreement provisions which are claimed to have been violated.

3. A statement of all facts relating to the dispute which the appealing party asserts exist and alleges can be proved and which support its position.

4. The full position of the appealing party.

A copy of the initial Submission shall be served on the other party or parties.

[fol. 78] H. Upon the filing of the Submission with the Company Member and the Union Member, the Company and the Union shall within five (5) days select a Neutral Member to sit with the Board in the consideration and disposition of the case and shall advise the appealing party and

interested parties of the name and address of the Neutral Member.

I. Within thirty (30) days after receipt of the appealing party's Submission, the other party to the dispute shall file a Statement of Position with the Company Member, the Union Member, and the party or parties which shall include:

1. If the parties are unable to agree on the question or questions at issue, the other party will state the question or questions at issue.

2. All facts relating to the dispute which the party asserts exist and alleges can be proved and which support its position.

3. The party's full position.

J. Upon the filing of the Statement of Position, the appealing party shall forward a copy of the Submission to the Neutral Member and the other party to the dispute shall file with the Neutral Member a copy of the Statement of Position. All subsequent documents to be filed with the Board shall be addressed to all three members of the Board.

K. Within fifteen (15) days after the date the Statement of Position is filed with the Company Member and the Union Member, the parties shall advise the Board the facts on which they desire to present evidence during the hearing of the dispute before the Board unless they mutually agree not to present any evidence or oral argument. Each party shall have the opportunity at the hearing to present evidence on the facts on which the other party presents evidence. The Neutral Member may also advise the parties the facts on which he desires to have evidence. If any party does not desire to present evidence or oral argument, that party shall so advise the other party or parties and the Board within the time limits specified in this paragraph.

L. 1. As soon as the parties and the Neutral Member (Chairman) have been advised of the facts on which [fol. 79] evidence will be presented, the Chairman shall set a date for hearing which shall be mutually satisfactory with the Union and Company Members

of the Board and shall be within thirty (30) days of said date, unless the Chairman is notified that the Company and the Union have agreed to a mutually satisfactory later date. The Chairman shall give the necessary notices in writing of such hearing to the parties. The decision of the Board shall be rendered within thirty (30) days after the close of the hearing. If neither party or the Chairman requests evidence to be presented at the hearing, hearing shall be waived except where any of the parties or the Chairman request a hearing for the purpose of oral argument.

2. In the event neither party desires to present evidence or oral argument at a hearing, the Chairman shall be so advised within the time limits specified in Paragraph K of this Article. If there is to be no hearing for presentation of evidence or oral argument, the Chairman shall set a date for an executive session of the Board during or after which a decision shall be rendered, but in any event said decision shall be rendered within forty (40) days of the date the Chairman was advised that no evidence or oral argument would be presented.

M. Employees covered by this Agreement may be represented at Board hearings by such person or persons as they may choose and designate and the Company may be represented by such person or persons as it may choose and designate. Evidence may be presented either orally or in writing, or both. All witnesses testifying orally or by deposition shall do so under oath.

On request of individual members of the Board, the Board may, by majority vote, or shall at the request of either the Union Member or the Company Member thereon, summon any witnesses who are employed by the Company and who may be deemed necessary by the parties to the dispute, or by either party, or by the Board itself.

The number of employee witnesses summoned at any one time shall not be greater than the number which can be [fol. 80] spared from the operation without interference with the services of the Company.

N. A majority vote of all members of the Board shall be competent to make a decision.

O. Decisions of the Board in all cases properly referable to it shall be final and binding upon the parties to this dispute and the parties to this Agreement.

P. Nothing herein shall be construed to limit, restrict, or abridge the rights or privileges accorded either to the employees or to the Company, or to their duly accredited representatives, under the provisions of the Railway Labor Act, as amended.

Q. Each of the parties hereto will assume the compensation, travel expense and other expenses of the Board Members selected by it and one-half of the compensation, travel expense and other expenses of the Neutral Member.

R. Each of the parties hereto will assume the compensation, travel expense and other expenses of the witnesses called or summoned by it. Witnesses who are employees of the Company shall receive free contingent air transportation over the lines of the Company from the point of duty or assignment to the point at which they must appear as witnesses and return, to the extent permitted by law.

S. The Company Member and the Union Member, acting jointly, shall have the authority to incur such other expenses as in their judgment may be deemed necessary for the proper conduct of the business of the Board, and such expenses shall be borne one-half by each of the parties hereto. Board Members who are employees of the Company shall be granted necessary leaves of absence for the performance of their duties as Board Members. So far as space is available, the Company and the Union Board Members shall be furnished free transportation over the lines of the Company for the purpose of attending meetings of the Board, to the extent permitted by law.

T. It is understood and agreed that each and every Board Member shall be free to discharge his duty in an independent manner, without fear that his individual relations [fol. 81] with the Company or with the Union may be affected in any manner by any action taken by him in good faith in his capacity as a Board Member.

U. A stenographic report will be made on each case on which a hearing is held unless the parties mutually agree otherwise.

V. The Chairman's copy of all transcripts and/or all records of cases will be filed at the conclusion of each case in a place to be provided by the Company, and will be accessible to Board Members and to the parties.

[fol. 82]

ARTICLE XX

UNION SECURITY

A. Any employee in a classification covered by this Agreement on the effective date of this Article shall become a member of the Union within sixty (60) days after the effec-
[fol. 83] tive date of this Article and shall be required as a condition of continued employment by the Company to maintain his membership in the Union so long as this Article remains in effect, to the extent of paying an initiation (or reinstatement) fee and monthly membership dues no greater than as hereinafter set forth. Such employee may have his monthly membership dues deducted from his earnings as provided in Paragraph L of this Article or he must pay his membership dues directly to the Financial Secretary of his local lodge. Initiation (or reinstatement) fees must be paid directly to the Financial Secretary of the employee's local lodge. The provisions of this paragraph shall not apply to such employee if employed on or before December 1, 1945 in a classification now covered by this Agreement and who was not a member of the Union on December 1, 1945 and who has not become a member since that date.

B. Any new employee covered by this Agreement who is hired on or after the effective date of this Article shall become a member of the Union within ninety (90) days after employment in a classification covered by this Agreement and shall be required as a condition of continued employment by the Company to maintain his membership in the Union so long as this Agreement remains in effect, to the extent of paying an initiation (or reinstatement) fee and monthly membership dues as hereinafter set forth.

C. Any employee maintaining, or maintaining and accruing, seniority under this Agreement (except as provided in Paragraph F of this Article) but not employed in a classification covered by this Agreement shall not be required to maintain Union membership during such employment but may do so at his option. Should such employee return to a classification covered by this Agreement, he shall be required to become a member of the Union within fifteen (15) days after the date he returns to such classification, and shall, as a condition of employment in classifications covered by this Agreement, become a member of the Union and maintain membership in the Union so long as this Article remains in effect, to the extent of paying an initiation (or reinstatement) fee and/or monthly membership dues.

D. The provisions of this Article shall not apply to any employee covered by this Agreement to whom membership in the Union is not available by payment of initiation (or reinstatement) fee, if applicable, and monthly dues, upon the same terms and conditions as are generally applicable to any [fol. 84] other employee of his classification at his point on the Company's system or in the local lodge on the Company's system to which assigned by the Union, or to any employee to whom membership in the Union is denied or terminated for any reason other than the failure of the employee to pay initiation (or reinstatement) fee, if applicable, and monthly dues. Nothing in this Article shall require the payment of an initiation (or reinstatement) fee by an employee if an authorized or permissible transfer according to the By-Laws or Constitution of the Union is involved.

E. If any employee covered by this Agreement has resigned from the Company and is reemployed he shall be governed by Paragraph A of this Article.

1. If any employee is laid off and is recalled from lay-off he shall be governed by Paragraph C of this Article.

2. The seniority status and rights of employees granted leaves of absence to serve in the Armed Forces shall not be terminated by reason of any of the provisions of this Article, but such employees shall upon

resumption of employment in classifications covered by this Agreement be governed by the provisions of Paragraph A of this Article.

F. The payment of membership dues shall not be required as a condition of employment during leave of absence without pay or during periods of transfer or promotion to a classification not covered by this Agreement, except employees given temporary transfers not to exceed six (6) months or any extension thereof as provided in Paragraph M of Article IX of this Agreement will be required to be a member of the Union and pay monthly dues during said temporary transfer as a condition of maintaining and accruing seniority under this Agreement.

G. Notwithstanding the provisions of Paragraph F of Article XV of this Agreement, when an employee does not become a member of the Union by payment of an initiation (or reinstatement) fee as provided in this Article or who is a member of the Union and becomes delinquent in the payment of monthly dues as provided in this Paragraph the following procedure shall apply:

1. Employee Who Does Not Become a Member of the Union:

[fol. 85] a. If a new employee has not become a member of the Union upon completion of seventy-five (75) days of service with the Company, the System General Chairman of the Union shall notify such employee in writing, registered mail, return receipt requested, copy to the employee's system Department Head, that such employee must become a member of the Union within the time limits specified in Paragraph B of this Article or be subject to discharge as an employee of the Company. If upon expiration of the period of time specified in Paragraph B of this Article such new employee has not become a member of the Union, the System General Chairman of the Union shall certify in writing to the employee's system Department Head, copy to the employee, that the employee has failed to become a member of the Union as provided in this Article and is, therefore to be

discharged. The employee's system Department Head or his designee shall then promptly notify the employee involved that he is to be discharged from the services of the Company, and shall promptly take proper steps to so discharge the employee.

b. If an employee other than a new employee who is required to become a member of the Union as provided in this Article does not become a member of the Union within the time limits specified in this Article for employees in his category covered by this Agreement, the System General Chairman of the Union shall notify the Company, copy to the employee that such employee has failed to become a member of the Union as required by this Article and is, therefore, to be discharged. Such employee's system Department Head or his designee shall then promptly notify the employee involved that he is to be discharged from the services of the Company and shall promptly take proper steps to discharge said employee.

2. Employee Delinquent in Payment of Monthly Membership Dues:

a. If an employee covered by this Agreement becomes delinquent by more than two (2) calendar months in the payment of monthly dues, the System [fol. 86] General Chairman of the Union shall notify the employee in writing, registered mail, return receipt requested, copy to the employee's system Department Head, that said employee is delinquent in the payment of monthly membership dues as specified herein and accordingly will be subject to discharge as an employee of the Company. Such letter shall also notify the employee that he must remit the required payment to the Financial Secretary of his local lodge by the twenty-second (22) day of the month in which notice from the System General Chairman is received or be subject to discharge. If such employee still remains delinquent in the payment of dues on the twenty-second (22) day of the month in which his

notice from the System General Chairman was received, the System General Chairman of the Union shall certify in writing to the employee's system Department head, copy to the employee, that them employee has failed to remit payment of dues within the grace period allowed herein and is, therefore, to be discharged. The employee's system Department Head or his designee shall then promptly notify the employee involved that he is to be discharged from the services of the Company and shall promptly take proper steps to so discharge the employee.

3. An employee discharged by the Company under the provisions of this Paragraph shall be deemed to have been discharged for cause within the meaning of the terms of this Agreement.

H. Any discharge under the terms of this Article shall be ased solely upon the failure of the employee to pay or ender initiation (or reinstatement) fee and/or membership nes upon the same terms and conditions as are generally pplicable to any other member of the Union in his classification of employment at his point on the Company's, ystem or local lodge on the Company's system to which ssigned by the Union within the time limits specified herein nd not because of denial or termination of membership in he Union for any other reason.

I. Notwithstanding the provisions of Article XV of this Agreement, a grievance by an employee who is to be discharged as the result of an interpretation or application of fol. 87] the provisions of this Article, shall be subject to he following procedure:

1. Such employee who believes that the provisions of this Article pertaining to him have not been properly interpreted or applied and who desires a review must submit his request for review in writing within five (5) days from the date of his notification by his System Department Head or designee as provided in Paragraph G, subparagraph 2, of this Article. The request will be submitted to the Chief Operating Offi-

cer of the appropriate administration with a copy to the System General Chairman of the Union. The System General Chairman of the Union or his designee may be present at the review of the grievance to represent the Union interest in the case. The Chief Operating Officer of the appropriate administration or his designee will review the grievance and render a decision in writing with a copy to the System General Chairman of the Union not later than ten (10) days following the receipt of the grievance.

2. The Chief Operating Officer of the appropriate administration or his designee will forward his decision to the employee with a copy to the System General Chairman. If the decision is not satisfactory to either the employee or the Union, then either may appeal the grievance directly to the System Board of Adjustment, established under Article XVI of this Agreement within fifteen (15) days from the date of the decision. The terms and provisions of such Article shall be applicable, except as otherwise specified herein.

3. During the period a grievance is filed under the provisions of this paragraph and until after decision by the Chief Operating Officer of the appropriate administration or his designee or after final decision by the System Board of Adjustment, if appeal is made to that Board, the employee shall not be discharged from the Company because of non-compliance with the terms and provisions of this Article.

4. Saturdays, Sundays and Holidays shall be excluded only from the time limits specified in this Paragraph I.

[fol. 88] J. No employee or employees covered by this agreement or an employee whose employment is terminated pursuant to the provisions of this Article or the Union shall have any claim for loss of time, wages or any other damages against the Company because of agreeing to this Article of this Agreement or because of any alleged violation, misapplication, compliance or non-compliance with any of the provisions of this Article. If notwithstanding the provisions of the first sentence of this paragraph a Board, Court or other competent authority shall in a particular

instance or case enter an award, decision or judgment monetary or otherwise against the Company because of agreeing to this Article of this Agreement or because of alleged violation, misapplication, compliance or non-compliance with any provision of this Article such award, decision or judgment shall be borne equally between the Company and the Union, except that the Union will completely indemnify the Company if such award, decision or judgment is entered against the Company because of the Company having agreed with the Union to include this Article in this Agreement.

K. During the life of this Agreement the Union agrees the maximum initiation (or reinstatement) fee shall be Twenty Dollars ($20.00) and the maximum membership dues for all classifications shall be Five Dollars ($5.00) per month.

DUES CHECK OFF

L. During the life of this Agreement the Company agrees to deduct from the pay of each member of the Union and remit to the Union 'standard' monthly membership dues uniformly levied in accordance with the constitution and by-laws of the Union as prescribed by the Railway Labor Act, as amended, provided such member of the Union voluntarily executes the agreed upon form, which is hereinafter included in this Agreement, to be known as 'check-off form', which shall be prepared and furnished by the Union. The Company will not be required to deduct monthly membership dues from the pay of employees covered by this Agreement unless the dues for the employee conform to one of the following:

1. 'Standard' dues for employees of his classification as designated by the Union for San Francisco - Oakland, even though these dues may be the same as those provided in sub-paragraph 2 next page.

[fol. 89] 2. 'Standard' dues for employees of his classification as designated by the Union for any or all other points on the Company's system.

3. All 'Standard' dues shall not exceed the maximums stipulated in Paragraph K of this Article.

* * * * * * *

[fol. 90]

EXHIBIT 4 TO AFFIDAVIT OF CHARLES M. MASON

UNITED

LETTERS OF AGREEMENT

COVERING INTEGRATION OF RAMP AND STORES EMPLOYEES

of

UNITED AIR LINES

and

CAPITAL AIRLINES

[fol. 91]

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[fol. 92]

LETTER BB

6/23/61

LETTER OF AGREEMENT

between

UNITED AIR LINES, INC.

and

THE INTERNATIONAL ASSOCIATION OF MACHINISTS

THIS LETTER OF AGREEMENT, made and entered into by and between UNITED AIR LINES, INC. (hereinafter referred to as "United") and the International Association of Machinists (hereinafter referred to as the "IAM").

WITNESSETH:

WHEREAS, on April 3, 1961, the Civil Aeronautics Board approved a merger of Capital Airlines, Inc. (Capital) into United Air Lines, Inc., and

WHEREAS, the Ramp and Stores employees of United are represented by the IAM and their rates of pay, seniority, rules and working conditions are governed by the 1961-62 Ramp and Stores Agreement between United and the IAM, and

WHEREAS, the employees performing ramp service and storekeeping work on Capital were part of the craft or class of clerical, office, stores, fleet and passenger service employees covered by an agreement between Capital and the Brotherhood of Railway Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the "BRC"), and

WHEREAS, Section 3 of the Labor Protective Provisions, imposed by the Civil Aeronautics Board as a condition of its approval of the United-Capital merger, requires that provisions be made for the integration of seniority lists in a

fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected, and

[fol. 93] WHEREAS, the merger of Capital into United became effective June 1, 1961, and

WHEREAS, representatives of the IAM and the BRC met with United on June 20, 1961, but the BRC refused to negotiate for the integration of the seniority lists of the afore-mentioned employees, and

WHEREAS, United and the IAM wish to provide for the integration of seniority lists of the Ramp and Stores employees of United and Capital in a fair and equitable manner in accordance with Section 3 of the Labor Protective Provisions attached to the Civil Aeronautics Board's Order of April 3, 1961.

NOW, THEREFORE, the parties have mutually agreed as follows:

A. *Definitions*

1. The seniority lists to be established for the purposes of seniority integration shall be lists of employees in the following classifications:

Lead Ramp Serviceman	Lead Storekeeper
Ramp Serviceman	Storekeeper

2. Such lists shall be point classification lists for all classifications listed in Item 1 above.

3. For each seniority classification to be integrated, a "common point" shall be a station under the UAL-IAM Ramp and Stores Agreement at which on June 1, 1961, at least one employee of each carrier doing work of that seniority classification was located.

4. For each seniority classification to be integrated, a "United point" shall be a station under the UAL-IAM Ramp and Stores Agreement at which on June 1, 1961, only United employees doing work of that seniority classification were located.

[fol. 94] 5. For each seniority classification to be integrated, a "Capital point" shall be a station under the UAL-IAM Ramp and Stores Agreement at which on June 1, 1961, only Capital employees doing work of that seniority classification were located.

6. "Employee" shall mean any person who, on June 1, 1961, was performing the work of a classification listed in Item 1 above or comparable work for a majority of his time.

7. "*Converted* point classification seniority date" shall be the date the employee began performing work of a classification listed in Item 1 above or comparable work for a majority of his time at any point on either system adopted as that employee's point classification seniority date.

8. "*Established* point classification seniority date" shall be the employee's established point classification seniority date for United employees hired under Ramp and Stores Agreement and, for all other employees, the date on which the employee began performing work of a classification listed in Item 1 above or comparable work for a majority of his time at the point on either system at which he was located on June 1, 1961.

B. *Seniority Integration*

1. All former employees of Capital Airlines at Buffalo, Atlanta, Milwaukee, Minneapolis, Pittsburgh, Detroit, Cleveland, Midway (Chicago), O'Hare (Chicago), Newark, Philadelphia, Baltimore, La Guardia (New York), Idlewild (New York), and Washington who on June 1, 1961, were performing the work described in Article IV, Paragraphs A and B, of the Ramp and Stores Agreement a majority of their time shall have seniority status as Lead Ramp Serviceman and/or Ramp Serviceman. Similarly, all former employees of Capital Airlines who on June 1, 1961, were performing the work

[fol. 95] described in Article IV, Paragraphs C and D, of the Ramp and Stores Agreement a majority of their time shall have seniority status as Lead Storekeeper and/or Storekeeper.

2. Effective June 1, 1961, the seniority list for each classification at a common point or at a United point shall be established by giving each employee his *established* point classification seniority date as his point classification seniority date.

3. Effective June 1, 1961, the seniority list for each classification at a Capital point shall be established by giving each employee as his point classification seniority date the seniority date he had in the position he occupied immediately prior to June 1, 1961. This seniority date shall be applicable as long as the employee remains at the point at which he was located on June 1, 1961.

4. Subsequent to June 1, 1961, employees transferred by the Company as a result of the merger or employees who transfer under any circumstances in which they carry point seniority with them to their new point shall establish at the point to which transferred their point classification seniority in their basic seniority classification and, when transferred in a premium classification, in the premium classification, as follows:

From	To	Point Classification Seniority Date
Common Point	Common Point	Established
	United Point	Established
	Capital Point	Converted
United Point	Common Point	Established
	United Point	Established
	Capital Point	Converted
Capital Point	Common Point	Established
	United Point	Established
	Capital Point	Converted

[fol. 96] *Exception*: If a former Capital Airlines employee is transferred to a Capital point as a result of the merger or under circumstances in which he carries point seniority with him, his seniority date at the new point shall be in accordance with Item B-3 above.

5. Subsequent to June 1, 1961, any employee who transfers by bid or in any other manner than that provided in Item 4 above shall have his point classification seniority date established in accordance with the UAL-IAM Ramp and Stores Agreement.

C. *Seniority Lists*

1. The integrated seniority lists of employees under the UAL-IAM Ramp and Stores Agreement shall be established by one (1) representative of the Union and one (1) representative of the Company in accordance with the provisions of this Letter of Agreement.

2. The Union and Company representatives shall be empowered to review the seniority lists which have been issued by United Air Lines and Capital Airlines and the company records of either carrier in the performance of its function.

3. When the seniority lists for each point are finally established in accordance with the provisions of this Letter of Agreement, the dates appearing thereon shall be presumed correct and the lists shall be published at the point in accordance with Article IX of the 1961-62 Ramp and Stores Agreement between the Company and the Union as of the effective date of the merger. Any protests of seniority dates appearing thereon must be submitted within thirty (30) days after the date the controversy arises, which shall be the date of publication of such lists, to the President and General Chairman of the Union, on the grievance form provided for in the UAL-IAM Ramp and Stores Agreement for the filing of second step grievances. The Presi-

[fol. 97] dent and General Chairman of the Union shall submit such protests for decision to the Negotiating Committee of the Union and the Company.

4. In the event the Negotiating Committees fail to agree on a decision on a seniority protest, the dispute may be submitted for adjustment to the UAL-IAM Merger Arbitration Committee within thirty (30) days of the date of failure to agree.

This Letter of Agreement shall be effective on the date of signing and shall remain in full force and effect for a period equivalent to the claim periods specified in the labor protective provisions imposed by the Civil Aeronautics Board in connection with the merger of United Air Lines and Capital Airlines, unless otherwise agreed to. It is the intention of the parties hereto that this Letter of Agreement shall take precedence over any provisions of the Agreement between the Company and the Union which may be in conflict with this Letter of Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Letter of Agreement this 23rd day of June, 1961.

WITNESSES:	UNITED AIR LINES, INC.
/s/ C. M. Mason	/s/ R. F. Ahrens
/s/ P. M. Berthoud	R. F. Ahrens
/s/ R. H. Pollard	Senior Vice President-Personnel
WITNESSES:	INTERNATIONAL ASSOCIATION OF MACHINISTS
/s/ L. O. Redding	/s/ J. L. Reeves
/s/ J. Cervenka	President & General Chairman, District 141

[fol. 98] Clerk's Certificate to foregoing papers (omitted in printing).

[fol. 99]

EXHIBIT 5 TO AFFIDAVIT OF CHARLES M. MASON

ATTENTION

CAPITAL—UNITED EMPLOYEES

Our Brotherhood, on November 9, 1961, filed a suit in U. S. District Court in Cincinnati, Ohio, charging that United Air Lines, Inc., violated the August 3, 1959, contract between our Brotherhood and Capital Airlines, Inc., and various provisions of the Railway Labor Act by refusing to apply the terms of the agreement to former Capital employees represented by our Brotherhood who became United employes when Capital was merged with United.

In 1948, our Brotherhood signed an agreement with Capital covering rates of pay, rules and working conditions of clerical employes. This agreement was revised from time to time, in accordance with the Railway Labor Act, the last agreement being entered into on August 3, 1959. Among other things, the agreement provided:

> "All provisions of this Agreement shall be binding upon the successors or assigns of the Company and in case of a consolidation or merger, the Company will notify the Brotherhood at least ninety (90) days prior to such consolidation or merger, and representatives of the Company and the Brotherhood will meet and negotiate for the procedure to be followed and the protection to be afforded the employes involved."

On August 11, 1960, Capital and United entered into an agreement of merger. However, neither of the carriers gave any notice of the proposed merger to our Brotherhood. Representatives of our Brotherhood called the attention of Capital and United to the fact that the foregoing provisions of the agreement had not been complied with and requested a conference. United declined to confer and Capital representatives, at a meeting on November 28, 1960, stated they could not negotiate an agreement relating to employes which would be effective upon consummation of the merger or binding upon United.

The Brotherhood intervened in the proceedings before the Civil Aeronautics Board considering the joint applica-

tion of Capital and United for approval of the merger, and requested that Board, as a condition of its approval, require United to take over and apply the Brotherhood-Capital agreement to the employes of Capital covered by the agreement. The CAB, however, did not so condition its approval of the proposed merger in its order issued April 3, 1961, nor did it purport to pass on the issue of whether United would be legally justified in ignoring the Brotherhood-Capital agreement.

On May 29, 1961, shortly before consummation of the merger on June 1, the Brotherhood applied to the National Mediation Board for an interpretation of the August 3, 1959, agreement, with particular reference to the language [fol. 100] making its provisions "binding upon the successors or assigns" of Capital. The Mediation Board issued its opinion on August 28, 1961, finding that the language in question was "clear and unambiguous" and "means just what it says."

A meeting with United was requested by our Brotherhood on September 1, but United refused such a meeting by letter dated September 21.

The complaint of the Brotherhood alleges that "United's refusal to apply the provisions of the agreement of August 3, 1959, between the Brotherhood and Capital to any of the employes of Capital in the craft or class covered by such agreement and who became employees of United upon consummation of the merger" constitutes a violation of that agreement and is also a breach of the merger agreement which provided that liabilities and duties of Capital should attach to United and could be enforced against United the same as if they had been incurred by United. Additionally, the complaint charges that the Delaware Corporation Law, applicable to both Capital and United as Delaware corporations, was violated since that state's law provides that the liabilities of corporations shall not be lessened by consolidation or merger.

Finally, the complaint charges that provisions of the Railway Labor Act, requiring carriers subject to it to make and maintain agreements, prohibiting changes in rules and working conditions except in accordance with the procedures of the Act, and requiring that disputes as to the ap-

plication of agreements be settled by negotiation, have been violated.

The complaint requests the Court declare the legal rights of the parties, and specifically find "that United is a successor or assign of Capital" within the meaning of the August 3, 1959, agreement, that "United assumed the liabilities and duties" of that agreement because of the provisions in the merger agreement, that by operation of Delaware law United is bound by the Brotherhood-Capital agreement, that United be enjoined "from continuing its refusal to apply the provisions of the collective bargaining agreement of August 3, 1959, between the Brotherhood and Capital to employes of Capital covered by that agreement who became employes of United upon the consummation of the merger," and that the Brotherhood be granted "all other legal or equitable relief to which it may be entitled."

(Insignia)

AIR TRANSPORT DIVISION

1015 Vine St. B. R. C. Cincinnati 2, Ohio

[fol. 101]

AFFIDAVIT OF C. PATE HUTCHENS, JR. TO MOTION TO DISMISS OR FOR SUMMARY JUDGMENT—Filed December 26, 1961

State of Illinois,
County of Cook, ss.

C. Pate Hutchens, Jr., being first duly sworn, on oath deposes and says:

1. I am the Administrative Assistant to the Director of Personnel, Field Services for United Air Lines, Inc. Prior to the merger of United and Capital Airlines, Inc., I was an employee of Capital, and had been since 1940. Immediately prior to the merger I was the Director of Personnel for Capital. In that capacity I was familiar with the collective bargaining relations between Capital and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees ("Brotherhood"), plaintiff herein.

2. On May 13, 1947, Brotherhood was certified as the duly designated and authorized representative for the clerical, office, stores, fleet and passenger service employees of the Pennsylvania Central Airlines Corporation, for the purposes of the Railway Labor Act, by the National Mediation Board. Shortly thereafter the name of the Corporation was charged to Capital Airlines, Inc., the same company which was subsequently merged with United.

3. Capital maintained collective bargaining relations with the Brotherhood continuously from the time of its certification until the merger of Capital and United. The most recently negotiated collective bargaining agreement between Capital and the Brotherhood was dated August [fol. 102] 3, 1959, and is attached to the Complaint herein as Exhibit A.

4. At the time of the negotiation of this most recent collective bargaining agreement between Capital and Brotherhood there was also negotiated between them a Union Security Agreement set forth at pages 50 to 57 of Exhibit A to the Complaint. This Union Security Agreement provides generally that any person then an employee of Capital covered by the collective bargaining agreement between Capital and Brotherhood who was a member of Brotherhood as of February 1, 1959, would be required to maintain his membership in Brotherhood as a condition of employment and that any person becoming an employee after February 1, 1959, would be required to become a member of the Brotherhood as a condition of employment with Capital.

5. From February 1, 1959, to the effective date of the merger of Capital and United, Capital hired approximately 1,150 employees who were subject to the requirements of the Union Security Agreement between Capital and Brotherhood.

C. Pate Hutchens, Jr.

Subscribed and Sworn to before me this 20th day of December, 1961.

Catherine A. Vita, Notary Public.

(Seal)

[fol. 103]

AFFIDAVIT OF S. SZALMA TO MOTION TO DISMISS OR FOR SUMMARY JUDGMENT—Filed December 26, 1961

State of Colorado,
City and County of Denver, ss.

S. Szalma, being first duly sworn, on oath deposes and states:

1. I am Staff Assistant-Union Relations, Transportation Services Administration of United Air Lines, Inc., defendant herein.

2. Prior to the merger of United and Capital Airlines, Inc., I was an employee of Capital. Immediately prior to the merger I was the Superintendent of System Line Maintenance-Western Region and Acting Director of Industrial Relations.

3. In connection with my duties with Capital, I attended a meeting on November 28, 1960 at Capital's Washington, D. C. offices between representatives of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and of Capital. Mr. Robert J. Wilson, Vice President—Properties & Personnel, and I represented Capital at that meeting.

4. On November 30, 1960, I prepared a memorandum of minutes of the November 28, 1960, meeting, which memorandum accurately reflects the matters discussed at that meeting. A copy of this memorandum is attached hereto.

S. Szalma

Subscribed and Sworn to before me this 19th day of December, 1961.

Jo Madden, Notary Public.

(Seal)

[fol. 104]

ATTACHMENT TO SZALMA AFFIDAVIT

CAPITAL
Airlines

INTER-OFFICE CORRESPONDENCE

Date November 30, 1960

Re:

To Memorandum for the Record

From S. Szalma

Station

At the request of the representatives of the BRC, a meeting was held on November 28, 1960 in the office of Robert J. Wilson, for the purpose of discussing Article 1, paragraph (b) of the BRC Agreement.

The following named individuals were in attendance at the meeting:

William Mahoney	—BRC
Arthur Read	—BRC
T. L. Creekmore	—BRC
Robert J. Wilson	—CAP
S. Szalma	—CAP

The discussion was pursuant to the specific portion of Article 1, paragraph (b), "representatives of the Company and the Brotherhood will meet and negotiate for the procedure to be followed and the protection to be afforded the employees involved".

The position of the BRC, as stated by Mr. Mahoney, was that Article 1(b) was violated by Capital when the provisions of that article (procedure and protection) were not negotiated beforehand and included as a basic requirement of the merger application.

Further, since it was not now possible to comply with that action, it was his position that Capital should now negotiate

the protection and procedure for its implementation and get some guarantee that United will honor such agreement as binding.

The Company position, as stated by Mr. Wilson, was that he did not agree that Capital was in violation of Article 1 (b).

Mr. Wilson pointed out that the subject article provided for certain action to be taken "90 days prior to such consolidation, or merger", not prior to or part of an application to merge.

Mr. Wilson stated that as the negotiating officer for Capital, he was willing and ready to accept the proposals of the [fol. 105] BRC for consideration and for negotiation, but that he could and would not imply or guarantee any resulting procedures to be binding on United Air Lines.

Mr. Wilson again asked Mr. Mahoney to submit his proposals for consideration and discussion, but Mr. Mahoney reiterated that he wanted to be assured first, that United would honor as binding, any agreement reached in the meeting.

Mr. Wilson repeated his statement, that he could not negotiate in behalf of United Air Lines, but could consider any proposals in behalf of Capital Airlines.

The meeting adjourned without the Brotherhood presenting any proposals.

S. Szalma

SS:rmb

cc: Robert J. Wilson

[fol. 106]

MOTION OF PLAINTIFF FOR SUMMARY JUDGMENT—
Filed February 23, 1962

The plaintiff, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, moves the Court to grant plaintiff summary judgment under Rule 56(a) of the Federal Rules of Civil Procedure.

The ground for this motion is that the motion of the defendant United Air Lines, Inc., for summary judgment and the affidavits attached thereto show that the material facts alleged in the Complaint are not disputed and that plaintiff on such undisputed facts is entitled to judgment as a matter of law.

There are attached hereto in support of this motion the affidavits of Charles L. Dennis and James L. Highsaw, Jr.

Respectfully submitted,

Leonard D. Slutz
Roy G. Holmes

Leonard D. Slutz, Roy G. Holmes, 900 Tri-State Building, Cincinnati 2, Ohio;

James L. Highsaw, Jr., 620 Tower Building, Washing 5, D. C.; Attorneys for Brotherhood of Railway and Steamship Clerks

Of Counsel:

Nichols, Wood, Marx & Ginter, 900 Tri-State Building, Cincinnati 2, Ohio;

Mulholland, Robie & Hickey, 741 National Bank Building, Toledo 4, Ohio; 620 Tower Building, Washington 5, D. C.

February, 1962

[fol. 107]

AFFIDAVIT OF CHARLES L. DENNIS TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT—Filed February 23, 1962

Hennepin County,
State of Minnesota, ss.

Charles L. Dennis, being duly sworn, deposes and says as follows:

1. That he is a Vice Grand President of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes. His home address is 127 N.

Mayfield Avenue, Chicago, Illinois. His office address is Room 818, 9 South Clinton Street, Chicago 6, Illinois.

2. That his duties as a Vice Grand President of said Brotherhood include the supervision of the employees of air carriers represented pursuant to the provisions of the Railway Labor Act by said Brotherhood, and that in the execution of these duties he is familiar with the provisions of the agreement between Capital Airlines and said Brotherhood governing rates of pay, rules and working conditions of the craft or class of clerical, office, stores, fleet and passenger service employees of said air carrier.

3. That between the years 1936 and 1940 affiant served as Assistant General Chairman of the Brotherhood organization on the Chicago and North Western Railroad Company and that between 1940 and 1956 affiant served as General Chairman of the Brotherhood organization on such railroad. In 1956 he assumed the duties of a Vice Grand President of the Brotherhood. During the approximately [fol. 108] 20 years of service as an Assistant General Chairman and General Chairman of the Brotherhood organization on the Chicago and North Western Railroad Company affiant became familiar with the effects of various types of railroad consolidations and merger transactions upon rail employees and with the provisions of the Washington Agreement of May, 1936 (popularly called the Washington Job Agreement).

4. It is United's intention and it has so advised affiant that it will not apply the rates of pay, rules and working conditions of the agreement between Capital and the Brotherhood effective August 3, 1959, to any of the craft or class of clerical, office, stores, fleet and passenger service employees. If United is permitted to carry out this intention, the employees of Capital in said craft or class represented by the Brotherhood will lose all of the benefits and protection of said agreement. Between 400-500 employees of Capital represented by the Brotherhood on Capital fall within the classification of stores, commissary and cargo employees and have been included in the contract between United and the International Association of Ma-

chinists. The question of the validity of such action is not involved in the present suit.

5. Article 1, paragraph (h) of said agreement also provides as follows:

> "All provisions of this Agreement shall be binding upon the successors or assigns of the Company and in case of a consolidation or merger, the Company will notify the Brotherhood at least ninety (90) days prior to such consolidation, or merger, and representatives of the Company and the Brotherhood will meet and negotiate for the procedure to be followed and the [fol. 109] protection to be afforded the employees involved."

Neither Capital nor United notified the Brotherhood prior to the execution of their merger agreement of August 11, 1960, of the proposed merger, nor has either air carrier at any time made any effort to comply with the provisions of said agreement to the effect that such provisions shall be binding upon the successors or assigns of Capital and that negotiations will be held with the Brotherhood for the procedures to be followed and the protection to be afforded the employees covered by the agreement upon any consolidation or merger. When the Brotherhood first learned of the merger agreement between Capital and United of August 11, 1960, it promptly wrote to both carriers calling their attention to the above-quoted provisions of the collective bargaining agreement.

The letter to Mr. Robert J. Wilson of Capital Airlines, dated August 16, 1960, introduced into the proceedings before the Civil Aeronautics Board as Exhibit No. BRC/CAPITAL-7 stated that "this provision is self-explanatory and clearly calls for the procedure suggested by this letter." The procedure suggested by the letter was that "it would be desirable both in the interests of the parties as well as in the interests of the Civil Aeronautics Board in the proceeding before it for an agreement covering the protection of employees to be entered into not only between Capital and the Clerks but also to include United as a party." It was requested that Capital contact the General

Chairman of the Brotherhood organization on Capital as soon as possible on this matter. The response from Mr. Wilson under date of August 29, 1960, advised the General Chairman of the Brotherhood that Capital was "familiar [fol. 110] with the provision in our contract which you quoted in your letter and will contact you at a future date to discuss the matter." Upon information and belief affiant asserts that Capital Airlines did not contact any representative of the Brotherhood in response to the letter of August 16, 1960, until after the completion of the hearing proceedings before the Civil Aeronautics Board and that at that time Mr. Wilson advised that Capital was unable to enter into any arrangements which would have any binding effect upon United.

Under date of August 16, 1960, Mr. Patterson, President of United, was also advised by the General Chairman of the Brotherhood organization on Capital of the existence of the quoted contract provisions and a request was made for negotiations with the company on the subject matter thereof. This advice was contained in a letter introduced into the proceedings before the Board as Exhibit BRC/CAPITAL-8. This letter set forth the above-quoted provisions of the collective bargaining agreement and then states as follows:

> "I particularly call your attention to the fact that Capital has contracted with the Brotherhood that all provisions of the outstanding collective bargaining agreement shall be binding upon the successors or assigns of the Company and that anything in the merger agreement to the contrary is in our opinion a direct violation of Capital's existing contracts."

This letter also proposed a joint meeting between Capital and United to work out in accordance with the provisions of the collective bargaining agreement "the procedure to be followed and the protection to be afforded the employees involved." Under date of August 26, 1960, Mr. R. F. Ahrens, Senior Vice President-Personnel of United, replied to the [fol. 111] Brotherhood's letter and in effect declined to have any meeting or any discussions with the Brotherhood concerning this matter.

6. On May 9, 1961, affiant met with Mr. Charles Mason, Assistant to the Senior Vice President of United in charge of Personnel, in United's offices in Chicago to discuss the proposed merger and its effect upon employees of Capital represented by the Brotherhood. The results of this meeting were that United asserted that it would not assume the contract between Capital and the Brotherhood covering employees of Capital represented by the Brotherhood.

United has subsequently refused to even meet with the Brotherhood and discuss the matter thus leaving no alternative but a suit to protect the rights of the employees involved. The only matter United has been willing to discuss with the Brotherhood has been the integration of those employees who have been put under the I.A.M. agreement. The Brotherhood did not participate in any such discussions because of United's refusal to discuss implementing agreements covering the remainder of the former Capital employees governed by the Agreement of August 3, 1959.

7. At page 18 of its legal memorandum in support of its motion in this case United asserts, citing paragraph 15 of the affidavit of Mr. Mason, that "although not a matter of legal significance," the former Capital employees who were covered by the provisions of the Agreement of August 3, 1959, between the Brotherhood and Capital enjoy greater benefits now than they would have received if United had assumed the obligations of such an agreement upon consummation of the merger. I disagree with this statement [fol. 112] for the following reasons:

a. The seniority rights earned under the Capital-Brotherhood agreement by a Capital employee guarantee to him many benefits such as, payroll classification, rate of pay, rest days, shift preference and shift differentials, right to transfer or not transfer from one location to another, vacation rights, and preference to overtime work on the basis of his seniority status as established by agreement on seniority rosters. United has informed the Brotherhood that they are not required to respect these seniority rights, and that United management would be the sole judge as to the rights which these employees will retain upon their integration into United's employment forces.

b. The Capital-Brotherhood agreement contains provisions for the protection of employees in the event they are cited for discharge or discipline by supervisory personnel. In the event of such citation Capital employees are entitled to fair and impartial hearings, appellate procedures within the Company and ultimately the presentation of their case to a neutral arbitrator. During these proceedings Capital employees are entitled to be represented by the Brotherhood. Since United has refused to recognize the Capital-Brotherhood agreement, the Capital employees now protected by the discharge and discipline provisions of the agreement will be subject to discipline and discharge at the will of United. Should such discipline and discharge occur, the employees affected will be irreparably injured since they can never be adequately compensated for the harm which they will have suffered. The statement in paragraph 16 of Mr. Mason's affidavit to the effect that [fol. 113] United has established a grievance program for the employees involved does not affect this conclusion since this is no longer a matter of contract right.

c. The Capital-Brotherhood agreement provides for wages by automatic increment steps based on length of service with the carrier. These increment pay steps occur after stipulated periods of time and range from $6.00 per month to $30.00 per month dependent upon payroll classification and payroll grouping. Many employees were entitled to receive these automatic pay increases under the Brotherhood agreement during the 30 days after the consummation of the merger. Also many employees are entitled to longevity pay increases and shift differentials. There are also specific provisions which apply when employees move from one classification in one group to another classification in a different group. Under the United policy governing wages there are no specific guarantees and an employee's rate of pay is subject to the sole discretion of the local supervisor at a particular point. In no instance are increases automatic under the United policy.

Therefore, the present clerical and related employees of Capital are deprived of the above-described wage rights.

d. In addition to deprivation of the above-described rights and benefits under the Capital-Brotherhood agreement, the clerical and related employees of Capital are deprived of or subject to restrictions on the following benefits which they now receive under the Capital-Brotherhood agreement:

(1) Five-day guarantee

(2) Eight-hour day guarantee

(3) Sick leave allowances

[fol. 114] (4) Overtime allowances

(5) Assigned starting times

(6) Probationary periods

(7) Adjustment of grievances

(8) Group insurance plans

(9) Pension plans

(10) Free transportation

(11) Leave of absence

(12) Non-penalty for refusal of promotion

e. With respect to each and every employee benefit in the Agreement of August 3, 1959, between Capital and the Brotherhood, the elimination of the contract to those benefits by United's actions and the substitution of Company rules which are not binding injures the employees involved.

8. I appeared as a representative of the Brotherhood in the proceeding before the National Mediation Board on the Brotherhood's application in Case No. A-6037, for an interpretation of Article 1(b) of the Agreement of August 3, 1959. I have reviewed the statements set forth at pages 5-8 of the memorandum of the Brotherhood in opposition to United's motion and in support of the cross-motion of the organization in this case pertaining to statements made by United to the Mediation Board in the interpretation proceeding and affirm that these statements are true and cor-

rect reproductions of statements and arguments by United. submitted either at the hearing on July 11, 1961, or in a rebuttal statement dated July 26, 1961.

9. My lengthy experience in the railroad industry, as indicated in paragraph 3 of this affidavit, has made me familiar with the practices and procedures of railroads in cases of mergers and consolidations. It is the customary practice in the railroad industry in the cases of mergers [fol. 115] and consolidations for the surviving corporation to assume the collective bargaining agreements of the non-surviving carrier and then to work out the application thereof through implementing agreements such as is contemplated by Article 1(b) of the Agreement of August 3, 1959, here involved. I am familiar with the agreement entered into on June 18, 1959, in Interstate Commerce Commission Finance Docket No. 20599 between the Railway Labor Executives' Association, with which the Brotherhood is affiliated, and the Norfolk and Western Railroad. Paragraph (c) of this agreement reads as follows:

> "(c) The Norfolk & Western will take over and assume, subject to the provisions of the said Washington Job Protection Agreement, all contracts, schedules and agreements between the Virginian and the constituent labor organizations of the Railway Labor Executives' Association concerning rates of pay, rules, and working conditions in effect at the time of approval of the said merger, and will be bound by the terms and provisions thereof, subject to the changes in accordance with the provisions of the Railway Labor Act, as amended, in the same manner and to the same extent as if the Norfolk & Western had been a party thereto; *provided, however*, that the assumption of such agreements shall not prevent the consolidation of facilities and integration of employment forces subject to implementing agreements upon application of the terms of the Washington Job Protection Agreement and this agreement."

Pursuant to this agreement the Norfolk & Western did take over and assume the contracts, schedules, and agreements

between the Virginian and the Brotherhood and has continued to be bound by the terms and provisions thereof subject to changes therein in accordance with the provisions of the Railway Labor Act.

[fol. 116] 10. The Brotherhood does not and has not asserted any representation rights over an entire craft or class of United employees by reason of the August 3, 1959, agreement. It has sought only to protect the rights of the former Capital employees covered by that agreement. With respect to representation of the entire craft or class the Brotherhood has taken appropriate and legal steps under the Railway Labor Act looking toward a representation election. United's criticism of those efforts, as reflected in paragraph 18 of the affidavit of Mr. Mason is irrelevant to the present suit and is contrary to the spirit if not the letter of Section 2, Fourth of the Railway Labor Act which prohibits a carrier from "in any way" questioning the right of its employees to organize or assist in organizing the labor organization of their choice.

Charles L. Dennis

(Seal)

Subscribed and sworn to before me this 21 day of February, 1962.

Morris A. Olsen, Notary Public Hennepin County, Minn., My commission expires Jan. 21, 1966.

[fol. 117]

AFFIDAVIT OF JAMES L. HIGHSAW, JR. TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT—Filed February 23, 1962

Washington,
District of Columbia, ss.

James L. Highsaw, Jr., being duly sworn, deposes and says as follows:

1. That he is a partner in the Law Firm of Mulholland, Robie & Hickey and is one of the counsel for the Brotherhood of Railway and Steamship Clerks in the above-entitled case.

2. That this firm was also counsel for the International Association of Machinists in the proceeding in CAB Docket No. 6998 involving the application of Eastern Air Lines for the acquisition of Colonial Airlines; that affiant has examined the transcript of testimony and the joint exhibits of Colonial and Eastern in that proceeding relating to Eastern's assumption of the collective bargaining agreements of Colonial upon consummation of the acquisition and merger, and there is attached hereto as Appendix A a true and correct copy of Joint Exhibit No. 19 of the two carriers in the proceeding. Affiant further states that at page 1658 of the official transcript of the proceedings Mr. Joseph F. Brock, Vice President, Industrial and Personnel Relations of Eastern, testified as follows on November 7, 1952, with respect to Eastern's undertaking to honor the collective bargaining agreements of Colonial Airlines:

> "Q. I have one further question: Does Eastern Airlines intend to honor and work by the Labor agreements which Colonial Airlines has with its respective labor organizations and continue to work under the Colonial [fol. 118] agreements until, say, what you might call a master agreement is negotiated?
>
> "A. I believe we cover that in our Exhibit 18, last pagragraph:
>
> "'Eastern will, of course, assume and fulfill Colonial's obligations under that carrier's contracts with labor organizations respecting its personnel.'
>
> "Q. That is in your Exhibit 18?
>
> "A. Yes, Volume 1, Exhibit 18, last paragraph."

3. That affiant is counsel for the Air Line Pilots Association in the proceeding before the Civil Aeronautics Board, identified as *Alaska Coastal Airlines-Ellis Air Lines, Inc., Merger Case* (CAB Docket No. 13028), and there is attached hereto as Appendix B a true and correct copy of the stipulation and agreement entered into between the four air carriers involved in the proposed consolidation and merger before the Civil Aeronautics Board in such proceeding, paragraph 4 of which provides for the new consolidated company to take over and continue in effect the collective bargaining agreement between the Air Line Pilots Associ-

ation and Ellis pending a representation determination for all pilot personnel of the new company and the negotiation of a new agreement covering all such personnel. This stipulation and agreement appears as Exhibit E in the record of the Civil Aeronautics Board proceedings, page 7 of the hearing transcrip. Affiant further states that an identical agreement has been entered into between the four carriers involved and the independent pilot union representing pilot personnel of Alaska Coastal Airlines, which was filed as Exhibit F in the CAB proceeding. Affiant also states that on hearing transcript. Affiant further states that an identical [fol. 119] February 9, 1962, CAB Hearing Examiner James S. Keith served his recommended decision providing for approval of such consolidation and merger. The date for filing exceptions thereto expired on February 14, 1962. The only exceptions which have been filed are those of the applicants which relate solely to the treatment of mail pay upon the consummation of the consolidation.

4. That upon consideration of the motion and supporting memorandum of United Air Lines in this proceeding, affiant discussed with Mr. Plato E. Papps, the General Counsel of the International Association of Machinists, the claims of United that the dispute between the Brotherhood and the air carrier in this case involved the matter of representation rather than contract rights and that the International Association of Machinists was an indispensable party to the case. There is attached hereto as Appendix C an original of a letter, with attachments, which affiant has received from the General Counsel of the International Association of Machinists stating in part that there is no dispute between the Brotherhood and the International Association of Machinists with respect to the representation of employees on United and that the International Association of Machinists has no interest in the present litigation and no desire to be a party thereto.

James L. Highsaw, Jr.

(Seal)

Subscribed and sworn to before me this 19th day of February, 1962.

Charlotte D. Kimball, Notary Public, My Commission expires August 14, 1963.

[fol. 120]

APPENDIX A TO AFFIDAVIT OF JAMES L. HIGHSAW

COLONIAL - EASTERN

Integration Agreement Case

CAB Docket 6998

Exhibit No. 19
Page 1 of 2

BUREAU COUNSEL'S REQUEST NO. 22:

"List agreements with all labor organization with whom Colonial and Eastern bargained collectively and expiration dates of such agreements. Copies of the agreements are not requested, however, they should be made available for inspection at the time of the hearing."

COLONIAL:

Classification of Employees	Represented By	Termination Date
Clerical, Office & Station	Intl. Assn. of Machinists	9/30/55
Dispatchers & Jr. Dispatchers	Air Line Dispatchers Assn.	2/29/56
Maintenance Foremen & Supervisors	Intl. Assn. of Machinists	10/ 1/56
Maintenance, Stores, Commissary & Cargo	Intl. Assn. of Machinists	10/ 1/56
Pilots	Air Line Pilots Assn.	7/ 1/56
Radio & Teletype Operators	Intl. Assn. of Machinists	2/ 1/56
Stewardesses	Air Line Stewards & Stewardesses Assn.	1/ 1/55*

* The Air Line Stewards & Stewardesses Association has notified us of a intention to file proposed changes in the Agreement. To date such proposals have not been received by Colonial Airlines, Inc.

[fol. 121]

COLONIAL - EASTERN

Integration Agreement Case

CAB Docket 6998

Exhibit No. 19
Page 2 of 2

EASTERN:

Employees Covered by Labor Union Agreements	Labor Organizations	Expiration Date
Pilots	ALPA - Air Line Pilots Association	7/ 1/57
Stewards & Stewardesses	ALSSA - Air Line Stewards & Stewardesses Association	7/15/56
Mechanics & Store Employees	IAM - International Association of Machinists	10/ 1/56
Engineers	Flight Engineers International Association	Under negotiation
Communication Employees	Air Line Communication Employees Association, Unaffiliated	10/ 1/56

Eastern intends to continue to deal with these employees under the terms of those agreements and in accordance with the Railway Labor Act. Therefore, it is impossible to see how collective bargaining or labor agreements would be adversely affected.

[fol. 122]

APPENDIX B TO AFFIDAVIT OF JAMES L. HIGHSAW

BEFORE THE
CIVIL AERONAUTICS BOARD
Docket No. 13028

In the matter of the application of
ALASKA COASTAL AIRLINES
and
ELLIS AIR LINES, INC.
under Section 408 of the Federal Aviation Act of 1958, as amended.

STIPULATION AND AGREEMENT BETWEEN AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, ALASKA AIR TRANSPORT, INC., ALASKA COASTAL AIRLINES, ELLIS AIR LINES, INC., AND MARINE AIRWAYS

The Air Line Pilots Association, International, Alaska Air Transport, Inc., Alaska Coastal Airlines, Ellis Air Lines, Inc., and Marine Airways, parties in the above-entitled proceeding, stipulate and agree as follows:

1. Alaska Coastal Airlines (Coastal) and Ellis Air Lines, Inc. (Ellis), have requested the Board's approval under Section 408 of the Federal Aviation Act of 1958 of the consolidation of Ellis, Alaska Air Transport, Inc. (Alaska Air), and the Marine Airways (Marine) into a single air carrier corporation to be known as Alaska Coastal-Ellis Airlines (Alaska-Ellis).

2. On October 6, 1960, the Air Line Pilots Association, International (ALPA) and Ellis executed a collective bargaining agreement pursuant to the provisions of the Railway Labor Act, effective September 1, 1960, covering rates of pay, rules, and working conditions of the craft or class

[fol. 123] of pilot personnel of Ellis which contract is presently in full force and effect.

3. On December 29, 1961, the Air Line Pilots Association, International (ALPA) filed a response in the above entitled proceeding to the Order to Show Cause (Order No. E-17861) dated December 21, 1961, issued by the Board in such proceeding. In its response, ALPA raised certain questions concerning the position of the applicants herein with respect to the status of the collective bargaining agreement dated October 6, 1960, between ALPA and Ellis covering rates of pay, rules and working conditions of the craft or class of pilot personnel of Ellis. In its response ALPA also raised a question concerning the imposition of employee protective conditions under any Board approval of the proposed consolidation.

4. Alaska Air, Coastal, Ellis, and Marine further agree and stipulate that, in the event the Board approves the proposed consolidation, the new entity Alaska-Ellis will continue in effect the collective bargaining agreement between ALPA and Ellis referred to in paragraph 2 until such time as a representation determination is made for all pilot personnel of Alaska-Ellis pursuant to the provisions of the Railway Labor Act. Pending such determination, and the determination of new rates of pay, rules and working conditions covering all pilot personnel of Alaska-Ellis, the rates of pay, rules and working conditions of Ellis pilot personnel who become employees of Alaska-Ellis shall be governed by the terms of said agreement.

5. Alaska Air, Coastal, Ellis and Marine agree and stipulate that in the event the Board approves the consolidation [fol. 124] application of the above entitled proceeding, it may include in its order of approval as a condition thereof labor protective conditions similar to those imposed by the Board in its approval of the merger of Capital Airlines and United Air Lines.

6. The parties to this stipulation further agree that it shall be filed with the Civil Aeronautics Board in the above entitled proceeding and shall become a part of the record of such proceeding.

7. ALPA agrees that upon the filing of this stipulation with the Civil Aeronautics Board its objections to the approval of the application for consolidation in the above entitled proceeding without hearing upon the issues raised by ALPA in its response of December 29, 1961, are to be considered as withdrawn.

s/ Theodore I. Seamon

Theodore I. Seamon
Attorney for Alaska Air Transport, Inc., Marine Airways, and Alaska Coastal Airlines

s/ John Marshall

John Marshall
Attorney for Ellis Air Lines, Inc.

s/ James L. Highsaw, Jr.

James L. Highsaw, Jr.
Attorney for Air Line Pilots Association, International

January 19, 1962

[fol. 125]

APPENDIX C TO AFFIDAVIT OF JAMES L. HIGHSAW

INTERNATIONAL ASSOCIATION OF MACHINISTS

(Letterhead)

11-R-3 49-United Airlines

February 16, 1962

Subj: Brotherhood of Railway and Steamship Clerks vs United Airlines—CA-4904 (US, DC, Southern Dist., Ohio, Western Div.)

SPECIAL DELIVERY

James Highsaw, Esq.
Mulholland, Robie & Hickey
Tower Bldg.—14th & K Sts., N.W.
Washington 5, D. C.

Dear Mr. Highsaw:

Thank you for furnishing me with a copy of the Complaint filed by the Brotherhood of Railway and Steamship Clerks in the above-captioned matter (CA-4904).

As you know, I am familiar with the situation on United Airlines with respect to the International Association of Machinists and its representation of employees with that Carrier.

This is to advise that there no dispute between the Brotherhood of Railway and Steamship Clerks and the International Association of Machinists with respect to the representation of employees and, accordingly, the IAM has no interest and no desire to be a party to the litigation in the above subject matter.

In fact, I am calling to your attention a recent opinion (copy enclosed) and judgment of the United States District

Court for the District of Massachusetts in CA-61-97-C in which Local Lodge 1505 of the IBEW sought to intervene and participate in an arbitration proceeding directed by the Court pursuant to a collective bargaining agreement by and between the International Association of Machinists and the Raytheon Manufacturing Company. In that case the Court denied the intervention.

While not exactly in point, it is our opinion that our standing to intervene in the above-named litigation or our rights as an indispensable party are doubtful and in any event for the reasons stated above, we have no desire to participate or be a party thereto.

Very truly yours,

s/ Plato E. Papps

Plato E. Papps
General Counsel

Encl. (2) outlined above
PP/lg

[fol. 126]

IN THE UNITED STATES DISTRICT COURT

SUPPLEMENTAL AFFIDAVIT OF CHARLES M. MASON—
Filed March 12, 1962

State of Illinois,
County of Cook, ss.:

CHARLES M. MASON, being first duly sworn, on oath deposes and says:

1. I am Senior Vice President—Personnel of United Air Lines, Inc. I have previously filed an affidavit in this proceeding in support of United's Motion to Dismiss or for Summary Judgment.

2. I have read the affidavits of Charles L. Dennis and James L. Highsaw, Jr., with supporting exhibits, including the letter of February 16, 1962, of Plato E. Papps, general counsel of the IAM, filed herein by plaintiff Brotherhood.

3. The Ramp and Stores Agreement between United and the IAM, referred to in paragraph [illegible] prior affidavit and attached as Exhibit 3 to that affidavit, was negotiated by J. E. Reeves, System General Chairman, District 141, IAM, on behalf of the IAM, and me, among others, on behalf of United. Mr. Reeves has negotiated prior Ramp and Stores Agreements on behalf of the IAM for many years. These agreements have been administered on behalf of the IAM by Mr. Reeves. Mr. Plato E. Papps has never participated in the negotiation or administration of any prior or the present Ramp and Stores Agreements.

[fol. 127] 4. The Letters of Agreement between United and the IAM, by which there were integrated into the United-IAM Ramp and Stores Agreement the approximately 530 former Capital employees who were represented by Brotherhood and who were under the Brotherhood-Capital Agreement while Capital employees, were negotiated by Mr. Reeves on behalf of the IAM and me, among others, on behalf of United. These Letters of Agreement are Exhibit 4 to my prior affidavit. These Letters have been implemented on behalf of the IAM by Mr. Reeves. Mr. Papps has not participated in the negotiation or implementation of these Letters.

5. The 530 former Capital employees have been completely integrated into the United system, and their terms and conditions of employment are determined by the provisions of the Ramp and Stores Agreement. They have all become members of the IAM pursuant to the union security provisions and must maintain this membership as a condition of employment. Article XX, Ramp and Stores Agreement. In addition, many of them have elected to have their periodic membership dues to the IAM deducted by United from their pay checks, as provided in the "dues check-off" provisions of Article XX of the Ramp and Stores Agreement. Sums so collected by United have been transmitted to the IAM. Some of these former Capital employees are now serving as Stewards and Local Committeemen for

the IAM, and some of these are representing United [fol. 128] employees who were employed by United prior to the merger as well as former Capital employees. Former Capital employees have bid for and have been awarded premium jobs over employees who were employed by United prior to the merger, all as provided in the Ramp and Stores Agreement.

6. On March 7, 1962, I discussed with Mr. Reeves the letter of Mr. Papps attached to the Highsaw affidavit, and the Dennis affidavit, both referred to in paragraph 2 above. Mr. Reeves was aware of the content of these documents. He advised me that the status of the 530 former Capital employees had not been changed; that they were still covered by the terms of the IAM Ramp and Stores Agreement; that the IAM expected them to maintain their membership in the IAM as a condition of employment with United; that the IAM expected United to continue the dues check-off; that the IAM would continue to represent these employees under the provisions of the Ramp and Stores Agreement and had no intention of making any change in this respect.

7. United has received no notice from the IAM reflecting any change in the status of the 530 former Capital employees.

8. Mr. Reeves was the primary witness for the IAM during the United-Capital Merger hearings before CAB Examiner Wrenn. During his testimony at these hearings Mr. Reeves stated:

"... I think the mechanical employees of Capital Air- [fol. 129] lines should come under the United Air Lines agreements without loss of any monetary benefits whether it be in schedule A or fringe or without penalty.

"At the same time, without getting into a jurisdictional battle, we would like to welcome the ramp and stores employees on Capital Airlines who are now covered by a BRC agreement into the IAM where the IAM similar employees are covered by an IAM agreement." (Tr. 819)

9. When the anticipated merger of United and Capital was first announced, Mr. W. A. Patterson, President of United, announced that employment with United would be offered to all former Capital employees on the effective date of the merger, and this same representation was made to the CAB during hearings on the merger. The merger was made effective on June 1, 1961 at which time Capital went out of business and ceased to exist as a corporation. Employment with United has in fact been offered to all former Capital employees, including those who were formerly represented by the Brotherhood while employees of Capital.

10. I have discussed with officials of Braniff International Airways and of Eastern Airlines the integration of employees and operations after the Braniff-Midcontinent merger and the Eastern-Colonial merger. I have been informed by them that in each of these mergers the surviving carrier voluntarily agreed to assume the collective bargaining agreements of the disappearing carrier; that in each instance it was not possible to integrate the employees or operations of the two merging carriers while separate bargaining agree-
[fol. 130] ments were in effect for the same groups of employees of each of the merging carriers; that until the agreements of the disappearing carrier were cancelled the two merging carriers were operated as separate airlines.

Charles M. Mason

Subscribed and Sworn to before me this 9th day of March, 1962.

(unreadable signature)
Notary Public

(Seal)

IN THE UNITED STATES DISTRICT COURT

MEMORANDUM OPINION—Filed August 9, 1962

Although the defendant's motion is alternative in form, for present purposes it may be stated that this case has been submitted to the Court on cross motions for summary judgment; the alternative request of the defendant's motion is that the action be dismissed for lack of jurisdiction. Each party has filed extensive, even exhaustive, memoranda in support of its own position and in opposition to that urged by the other, and has filed protracted and detailed affidavits. Additionally, careful and capable oral arguments were made, and it might be stated that the transcript of that argument has been reread since the other filings and authorities have been studied.

After consideration of the various contentions presented, few of which can be summarily disposed of, it has been [fol. 131] concluded that the first ground set forth in the defendant's motion provides an obstacle to the taking of jurisdiction by this court. That ground is stated in the motion as follows:

> "1. The Court is without jurisdiction of this cause since it relates to a dispute as to who are the representatives under the Railway Labor Act of certain of the employees of United Air Lines, Inc. Exclusive jurisdiction to determine such a dispute vests with the National Mediation Board under the provisions of Section 2, Ninth, of the Railway Labor Act (45 U.S.C. §152, Ninth)."

Despite some possible clouding of this point, and perhaps even some attempted shift of position, on the part of the plaintiff, the fact remains that its Complaint clearly states that this action was brought because of the existence of "an actual controversy" under a "collective bargaining agreement executed pursuant to the provisions of the Railway Labor Act (45 U.S.C. Sections 151 et seq.)" After having so brought the action, plaintiff now contends (p. 32, plaintiff's first brief) that the issue here presented is "for the courts under the law of contracts . . . and not an issue

within the competence of the Mediation Board under the Railway Labor Act."

Under this theory, and upon the contention that this suit is not concerned with either a "representation dispute" or a "jurisdictional dispute between labor organizations," plaintiff seeks to avoid the consequences of three 1943 decisions by the Supreme Court which would otherwise be controlling. (*Switchmen's Union of North America* v. *National Mediation Board*, 320 U. S. 297; *General Committee* v. *M.K.T.R. Railroad Co.*, 320 U. S. 323; and *General Committee* v. [fol. 132] *Southern Pacific Co.*, 320 U. S. 338). Without here holding that this action fails to fall within either of those two categories nor that the triune of 1943 cases are limited thereto, we find them to have present application.

Plaintiff has urged (p. 7, second brief) that *Randolph* v. *Missouri, K. & T. R. Co.*, 85 F. Supp. 846 (D.C. Mo., 1949) is in point, but it appears to be distinguishable on the facts. It is true that this plaintiff had earlier attempted to have the National Mediation Board declare that it was the collective bargaining representative of certain of defendant's employees by requesting an interpretation of a mediation agreement (Complaint, Exhibit B). However, the plaintiff has never requested that the Board investigate any dispute as to who has been chosen by a majority of the employees as their authorized representative, nor has the plaintiff requested the Board to make a bargaining agent certification. The latter two requests are among those within the jurisdiction of the National Mediation Board (45 U.S.C. Section 152, Ninth). Hence the rationale of the *Randolph* case has no application here.

In spite of the fact that anything said following the above expression of our conclusion is obiter dictum, we feel constrained to observe that despite its own protestations we fail to see how this action could be consummated without joinder of the International Association of Machinists.

Defendant's motion to dismiss for lack of jurisdiction is found to be well taken.

[fol. 133]

IN THE UNITED STATES DISTRICT COURT

ORDER—Filed August 29, 1962

This cause came on to be heard on the motion of defendant, United Air Lines, Inc., to dismiss the Complaint under Rule 12 of the Federal Rules of Civil Procedure or in the alternative for summary judgment under Rule 56 of said Rules and on the motion of plaintiff for summary judgment under said Rule 56. The Court has considered said motions in light of the pleadings, affidavits and exhibits, together with the memoranda of authorities, filed and submitted by the respective parties and the oral arguments thereon, and has filed its Memorandum Opinion of August 9, 1962 addressed to said motions, and it appearing that this Court is without jurisdiction over the subject matter for the reason that the same relates to a dispute as to who are the representatives under the Railway Labor Act of certain of the employees of defendant, United Air Lines, Inc., and that exclusive jurisdiction of said dispute is vested with the National Mediation Board under the provisions of Section 2, Ninth, of the Railway Labor Act, it is

Ordered that the motion of defendant, United Air Lines, Inc., to dismiss the Complaint be and the same hereby is granted, and it is

Further Ordered that the respective motions of the parties for summary judgment be and the same hereby are denied for lack of jurisdiction, and it is

[fol. 134] Further Ordered that plaintiff pay the costs of this action.

To all of which plaintiff excepts.

Enter

John W. Peck, Judge, U.S.D.C.

Jack G. Evans, Attorney for Defendant.

Have Seen:

Roy G. Holmes, Attorney for Plaintiff.

Dated: 8/29/62

[fol. 135]

IN THE UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed September 10, 1962

Notice is hereby given that Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, the Plaintiff above named, hereby appeals to the United States Court of Appeals for the Sixth Circuit from the order granting the motion of the Defendant above named to dismiss the complaint, entered in this action on the 29th day of August, 1962.

Leonard D. Slutz, Roy G. Holmes, 900 Tri-State Building, Cincinnati 2, Ohio;

James L. Highsaw, 620 Tower Building, Washington 5, D. C., By Roy G. Holmes,

Attorneys for Appellant Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

Of Counsel:

Nichols Wood Marx & Ginter, 900 Tri-State Building, Cincinnati 2, Ohio;

Mulholland Robie & Hickey, 620 Tower Building, Washington 5, D. C.

[fol. 136]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Before: Miller, O'Sullivan and Phillips, Circuit Judges.

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—October 7, 1963

This cause is argued by James L. Highsaw, Jr. for plaintiff-appellant and by Stuart Bernstein for defendant-appellee, and is submitted to the Court.

[fol. 137]

IN THE UNITED STATES COURT OF APPEALS

Appeal from the United States District Court for the Southern District of Ohio.

JUDGMENT—Filed December 17, 1963

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Ohio, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

Approved for entry:

Harry Phillips, United States Circuit Judge.

[fol. 138] [File endorsement omitted]

No. 15176

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, Plaintiff-Appellant,

v.

UNITED AIR LINES, INC., Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Ohio, Western Division.

Before Miller, O'Sullivan and Phillips, Circuit Judges.

OPINION—Decided December 17, 1963

PHILLIPS, Circuit Judge. This case arises out of the merger of Capital Airlines, Inc. into United Airlines, appellee herein, on June 1, 1961. The facts concerning the

background and details of this merger are set forth in *Northwest Airlines, Inc.* v. *C.A.B.*, 303 F.2d 395 (C.A. D.C.), affirming the approval of the merger by the Civil Aeronautics Board.

In May 1947 appellant was certified by the National Mediation Board pursuant to the Railway Labor Act,[1] 45 U.S.C. § 151 et seq, as the designated bargaining agent for the employees of Capital in the craft or class of clerical, office, stores, fleet and passenger service. Pursuant to this certification, appellant and Capital entered into a collective [fol. 139] bargaining agreement effective August 1, 1948, which, with certain revisions, was in effect immediately prior to the time Capital was merged into appellee.

Article 1(b) of this collective bargaining agreement contained the following provision:

> "All provisions of this agreement shall be binding upon the successors or assigns of the Company (i.e. Capital) and in case of a consolidation or merger, the Company (i.e. Capital) will notify the Brotherhood at least 90 days prior to such consolidation, or merger, and representatives of the Company (i.e. Capital) and the Brotherhood will meet and negotiate for the procedure to be followed and the protection to be afforded the employees involved."

The merger agreement between appellee and Capital provided as follows:

> "United . . . shall be subject to all of the restrictions, disabilities and duties of each of the Constituent Corporations; . . . and all debts, liabilities and duties of each of the Constituent Corporations shall thenceforth attach to United, and may be enforced against

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[1] The Railway Labor Act, first adopted in 1926, was extended to air carriers in 1936 by the additions of Title II, 45 U.S.C. § 181 et seq., which applies all the provisions of the Act (with certain exceptions not involved here) to "every common carrier by air . . . and . . . person who performs any work as an employee . . . of such carrier." 45 U.S.C. § 181.

it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it."

Appellee announced from the outset of the merger proceedings that it would not assume or be bound by any of Capital's labor agreements. It is not contended that by the above-quoted language of the merger agreement appellee intended to assume the obligations of Capital under any of its collective bargaining agreements, or that appellee at any time made any representations to the effect that it as successor would be bound by the agreement between appellant and Capital.

Appellant participated as an intervenor in the proceedings before the Civil Aeronautics Board, urging that, if that Board should approve the proposed merger, this collective bargaining agreement be imposed upon appellee as a condition thereof. The Board refused to impose this condition in its order approving the merger, stating that this was a matter to be worked out "in accordance with regular procedures applicable to the matter of representation and agreement." Appellant appealed from the Board's decision to the Court of Appeals for the District of Colum- [fol. 140] bia, but thereafter withdrew its appeal with the acquiescence of the other parties.

This suit was filed by appellant seeking a declaration that appellee was bound by the terms of appellant's collective bargaining agreement with Capital and to enjoin appellee from refusing to apply that agreement to those former employees of Capital covered thereby who became employees of appellee upon consummation of the merger. Appellee moved to dismiss the complaint or for summary judgment upon the following grounds: The cause involved a dispute as to who were the representatives under the Railway Labor Act of certain of its employees and hence exclusive jurisdiction lay with the National Mediation Board; if the requested relief were granted appellee would be required to treat with a bargaining representative for a minority of a craft or class, contrary to the provisions of the Railway Labor Act; that the agreement between appellant and Capital revealed on its face that it could not be legally or practically applied to less than an entire craft or

class; that another labor organization had representation rights for part of the group upon which appellant was seeking to impose its agreement with Capital and hence this other labor organization was an indispensable party to the action.

Appellant filed a cross-motion for summary judgment upon the ground that the material facts alleged in the complaint were not in dispute and that appellant on such undisputed facts is entitled to judgment as a matter of law.

The District Court denied both motions for summary judgment for lack of jurisdiction, and granted appellee's motion to dismiss the complaint, holding that the case relates to a dispute as to who are representatives under the Railway Labor Act of certain employees of appellee and that exclusive jurisdiction to determine such a dispute vests with the National Mediation Board under the provisions of Section 2, Ninth, of the Railway Labor Act, 45 U.S.C. § 152, Ninth.

We affirm the District Court.

Three decisions of the Supreme Court make it clear that the federal courts have no jurisdiction over the solution of representation disputes. *Switchmen's Union of North America* v. *National Mediation Board*, 320 U.S. 297; *General Committee* v. *Missouri-Kansas-Texas Railroad Co.*, 320 U.S. 323; *General Committee* v. *Southern Pacific Co.*, 320 U.S. 338.

[fol. 141] The facts of this case demonstrate the soundness of these three decisions and the impracticality of judicial interference in representation disputes over which Congress has conferred jurisdiction upon the National Mediation Board. 45 U.S.C. § 152. Prior to the merger of Capital into appellee, Capital was substantially the smaller of the two airlines. Immediately prior to the merger it had about 6500 non-management employees, about 6000 of whom were represented by labor organizations under six agreements. Appellee had 21,000 non-management employees, about 13,500 of whom were represented by nine labor organizations under twelve agreements. At the time of the merger there were approximately 2700 employees of Capital in the clerical craft or class represented by appellant and covered by the collective bargaining agreement here sought

to be enforced against appellee. The number of employees of appellee in this general craft or class numbered approximately 10,000, a part of whom had been organized pursuant to a National Mediation Board election and divided into two separate classifications. Immediately prior to the merger, approximately 2200 of the 10,000 employees of appellee in these classifications were represented by the International Association of Machinists under what is designated in the record as the I.A.M. Ramp and Stores Agreement. The remaining 7800 employees of appellee in this general class were not represented by a labor organization but were under uniform personnel regulations covering wage rates and fringe benefits.

After the merger the former Capital employees performing work covered under the I.A.M. Ramp and Stores Agreement came under that agreement, and about 530 of the 2700 Capital employees formerly represented by appellant are now represented by the International Association of Machinists. The remaining 2170 former Capital employees are now working alongside the 7800 unorganized employees of appellee in the same job classifications, and all are subject to the same pay schedules, benefits and working conditions established by appellee's personnel regulations.[2]

The record further disclosed that appellant seeks to represent the entire craft or class of employees of appellee in the clerical, office, stores, fleet and passenger service, [fol. 142] numbering some 12,170 employees, and has filed an application with the National Mediation Board asking for such certification under Section 2, Ninth, 45 U.S.C. § 152, Ninth, and there is now pending before the Court of Appeals of the District of Columbia Circuit a case involving an aspect of that proceeding, styled *United Air Lines* v. *National Mediation Board et al.*, Case No. 17,777.

If the District Court had exercised jurisdiction in this case and had granted the relief sought in the complaint,

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[2] Appellee contends that, as a result of coming under its personnel regulations, these former Capital employees have realized an improvement in their pay and related benefits. We agree with appellant that this is not a matter of legal significance in this case.

such a determination clearly could have applied to no more than the 2700 former Capital employees, constituting a minority of this class or craft of appellee's employees, 530 of whom are now represented by the International Association of Machinists. Such an impracticable result demonstrates the soundness of the holding of the Supreme Court in the three above-cited cases that there is to be no judicial intervention in such representation disputes.

By skillful pleading in this case, appellant has tried to avoid the consequences of these three Supreme Court decisions above cited, which clearly otherwise would be controlling. Appellant contends that the complaint does not ask for an adjudication of a dispute concerning representation rights, but involves a dispute between the representative of employees and a carrier concerning the latter's contract obligations. It is significant, however, that the first paragraph of the complaint, after stating that this is an action for declaratory judgment, proceeds to make the following averment:

> "It is brought because there now exists, as will hereinafter be more fully described, an actual controversy between the parties with respect to maintenance of a collective bargaining agreement executed pursuant to the provisions of the Railway Labor Act (45 U.S.C.A. Section 151 et seq.)."

Looking through form to substance, we agree with the District Court that, although the suit is cast in the form of an action under the law of contracts, it in fact involves a representation dispute. Even though an action is brought as one sounding in contract the courts have no jurisdiction "where 'validity' of the contract depends upon the merits of a representation dispute." *Division No. 14, Order of Radio Telegraphers* v. *Leighty*, 298 F.2d 17, 20 (C.A. 4).

Appellant relies strongly upon the fact that, prior to [fol. 143] instituting this action, it filed with the National Mediation Board an application pursuant to Section 5, Second, of the Railway Labor Act, 45 U.S.C. § 155, Second, for an interpretation of the application or meaning of the

collective bargaining agreement here sought to be enforced, but the Board found that it did not have jurisdiction to spell out the rights and obligations of the parties after the merger of Capital into appellee. It is argued that the dismissal of the complaint by the District Court leaves appellant without any forum in which to adjudicate appellee's obligations under appellant's agreement with Capital.

As hereinabove pointed out, appellant thereafter filed an application with the National Mediation Board asking for certification to represent the entire craft or class of appellee's employees in the clerical, office, stores, fleet and passenger service, and that proceeding is pending at the present time.

Regardless of what action may have been taken or may hereafter be taken by the National Mediation Board in this dispute, it is our opinion that the District Court was correct in holding that it did not have jurisdiction. As said by the Supreme Court in *General Committee* v. *M.-K.-T.*, 320 U.S. 323, 336-37:

> "It seems to us plain that when Congress came to the question of these jurisdictional disputes, it chose not to leave their solution to the courts. . . . However wide may be the range of jurisdictional disputes embraced within § 2, Ninth, Congress did not select the courts to resolve them. . . . If the present dispute falls within § 2, Ninth, the administrative remedy is exclusive. If a narrower view of § 2, Ninth is taken, it is difficult to believe that Congress saved some jurisdictional disputes for the Mediation Board and sent the parties into the federal courts to resolve the others. . . .
>
> "In view of the pattern of this legislation and its history the command of the Act should be explicit and the purpose to afford a judicial remedy plain before an obligation enforceable in the courts should be implied. Unless that test is met the assumption must be that Congress fashioned a remedy available only in other tribunals. There may be as a result many areas in this field where neither the administrative nor the judicial function can be utilized. But that is only to

[fol. 144] be expected where Congress still places such great reliance on the voluntary process of conciliation, mediation and arbitration. . . . Courts should not rush in where Congress has not chosen to tread."

In *Division No. 14, Order of Radio Telegraphers* v. *Leighty*, 298 F.2d 17, 19 (C. A. 4), involving a merger of railroads, the Court dismissed for lack of jurisdiction, saying:

"This trilogy of cases [referring to the three Supreme Court decisions above cited] authoritatively determines that judicial intervention in railway labor disputes is restricted to the narrowest scope; that large segments of this field remain subject to the voluntary processes of conciliation, mediation and arbitration; that particularly in representation disputes the adjudicatory function has been committed by Congress to the National Mediation Board. . . ."

All the cases relied upon by appellant have been considered carefully, including: *Steele* v. *Louisville & Nashville R.R. Co.*, 323 U.S. 192; *Virginian Railway Co.* v. *System Federation*, 300 U.S. 515; *Brotherhood of Railroad Trainmen* v. *Smith*, 251 F.2d 282 (C.A. 6), affirming 144 F. Supp. 869 (S.D. Ohio); *Commercial Telegraphers' Union* v. *Western Union Telegraph Co.*, 53 F. Supp. 90 (D.D.C.); and *Livingston* v. *John Wiley & Sons, Inc.*, 313 F.2d 52 (C.A. 2), cert. granted 373 U.S. 908. We find all these cases to be distinguishable from this case, since we hold that the instant case involves a representation dispute and not merely an action sounding in contract.

The action of the District Court in dismissing the complaint for lack of jurisdiction is affirmed.

[fol. 145] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 146]

SUPREME COURT OF THE UNITED STATES

No. 801, October Term, 1963

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, Petitioner,

vs.

UNITED AIR LINES, INC.

ORDER ALLOWING CERTIORARI—April 20, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Goldberg took no part in the consideration or decision of this petition.